

(d) **NONCORE SYSTEM.**—There is authorized to be appropriated \$73,600,000 to the Bureau of Reclamation for the planning, design, and construction of the noncore system.

(e) **COST INDEXING.**—The sums authorized to be appropriated under this section may be increased or decreased by such amounts as are justified by reason of ordinary fluctuations in development costs incurred after the date of enactment of this title, as indicated by engineering cost indices applicable for the type of construction involved.

TITLE X—MISCELLANEOUS

SEC. 1001. SANTEE SIOUX TRIBE, NEBRASKA, WATER SYSTEM STUDY.

(a) **STUDY.**—Pursuant to reclamation laws, the Secretary of the Interior (hereafter in this section referred to as the “Secretary”), through the Bureau of Reclamation and in consultation with the Santee Sioux Tribe of Nebraska (hereafter in this section referred to as the “Tribe”), shall conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska that could serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

(b) **COOPERATIVE AGREEMENT.**—At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for activities necessary to conduct the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

(c) **REPORT.**—Not later than 1 year after funds are made available to carry out this section, the Secretary shall transmit to Congress a report containing the results of the study required by subsection (a).

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary \$500,000 to carry out this section.

SEC. 1002. YUOK TRIBE AND HOPLAND BAND INCLUDED IN LONG TERM LEASING.

(a) **IN GENERAL.**—The first section of the Act entitled “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”, approved August 9, 1955 (25 U.S.C. 415(a)) is amended by inserting “lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria,” after “Pueblo of Santa Clara.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to any lease entered into or renewed after the date of the enactment of this title.

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the House amendment and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIAN PROBATE REFORM ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 766, S. 1340.

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

The legislative clerk read as follows:

A bill (S. 1340) to amend the Indian Land Consolidation Act to provide for probate reform with respect to trust and restricted lands.

There being no objection, the Senate proceeded to consider the bill which

was reported by the Committee on Indian Affairs with an amendment, as follows:

[Strike the part shown in black brackets and insert the part shown in *Italic.*]

S. 1340

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 Probate Reform Act of 2001”.

SEC. 2. AMENDMENTS TO THE INDIAN LAND CONSOLIDATION ACT.

[(a) **IN GENERAL.**—The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended by adding at the end the following:

“Subtitle B—Indian Probate Reform

“SEC. 231. FINDINGS.

“Congress makes the following findings:

“(1) The General Allotment Act of 1887 (commonly known as the “Dawes Act”), which authorized the allotment of Indian reservations, did not allow Indian allotment owners to provide for the testamentary disposition of the land that was allotted to such owners.

“(2) The Dawes Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment.

“(3) The Federal Government’s reliance on the State law of intestate succession with respect to the descendency of allotments has resulted in numerous problems to Indian tribes, their members, and the Federal Government. These problems include—

“(A) the increasing fractionated ownership of trust and restricted land as these lands are inherited by successive generations of owners as tenants in common;

“(B) the application of different rules of intestate succession to each of a decedent’s interests in trust and restricted land if such land is located within the boundaries of different States which makes probate planning unnecessarily difficult and impedes efforts to provide probate planning assistance or advice;

“(C) the absence of a uniform general probate code for trust and restricted land which makes it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

“(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which is unfair to the owners of trust and restricted land and their heirs and devisees and which makes probate planning more difficult.

“(4) Based on the problems identified in paragraph (3), a uniform Federal probate code would likely—

“(A) reduce the number of unnecessary fractionated interests in trust or restricted land;

“(B) facilitate efforts to provide probate planning assistance and advice;

“(C) facilitate inter-tribal efforts to produce tribal probate codes pursuant to section 206; and

“(D) provide essential elements of general probate law that are not applicable on the date of enactment of this subtitle to interests in trust or restricted land.

“SEC. 232. RULES RELATING TO INTESTATE INTERESTS AND PROBATE.

“(a) **IN GENERAL.**—Any interest in trust or restricted land that is not disposed of by a valid will shall—

“(1) descend according to a tribal probate code that is approved pursuant to section 206; or

“(2) in the case of an interest in trust or restricted land to which such a code does not apply, be considered an ‘intestate interest’ and descend pursuant to subsection (b), this Act, and other applicable Federal law.

“(b) **INTESTATE SUCCESSION.**—An interest in trust or restricted land described in subsection (a)(2) (intestate interest) shall descend as provided for in this subsection in the following order:

“(1) **SURVIVING INDIAN SPOUSE.**—

“(A) **SOLE HEIR.**—A surviving Indian spouse of the decedent shall receive all of the decedent’s intestate interests if no Indian child or grandchild of the decedent survives the decedent.

“(B) **OTHER HEIRS.**—A surviving Indian spouse of the decedent shall receive a one-half interest in each of the decedent’s intestate interests if the decedent is also survived by Indian children or grandchildren.

“(C) **HEIRS OF THE FIRST OR SECOND DEGREE OTHER THAN SURVIVING INDIAN SPOUSE.**—The one-half interest in each of the decedent’s intestate interests that do not descend to the surviving Indian spouse under subparagraph (B) shall descend in the following order:

“(i) To the Indian children of the decedent in equal shares, or to the Indian grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the Indian children of the decedent do not survive the decedent.

“(ii) If the decedent is not survived by Indian children or grandchildren, to the surviving Indian parent of the decedent, or to both of the surviving Indian parents of the decedent as joint tenants with the right of survivorship.

“(iii) If the decedent is not survived by any person who is eligible to inherit under clause (i) or (ii), to the surviving Indian brothers and sisters of the decedent.

“(iv) If the decedent is not survived by any person who is eligible to inherit under clause (i), (ii), or (iii), the intestate interests shall descend, or may be acquired, as provided for in section 207(a)(3)(B), 207(a)(4), or 207(a)(5).

“(2) **NO SURVIVING INDIAN SPOUSE.**—If the decedent is not survived by an Indian spouse, the intestate interests of the decedent shall descend to the individuals described in subparagraphs (A) through (D) who survive the decedent in the following order:

“(A) To the Indian children of the decedent in equal shares, or to the Indian grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the Indian children of the decedent do not survive the decedent.

“(B) If the decedent is not survived by Indian children or grandchildren, to the surviving Indian parent of the decedent, or to both of the surviving Indian parents of the decedent as joint tenants with the right of survivorship.

“(C) If the decedent is not survived by any person who is eligible to inherit under subparagraph (A) or (B), to the surviving Indian brothers and sisters of the decedent.

“(D) If the decedent is not survived by any person who is eligible to inherit under subparagraph (A), (B), or (C), the intestate interests shall descend, or may be acquired, as provided for in section 207(a)(3)(B), 207(a)(4), or 207(a)(5).

“(3) **SURVIVING NON-INDIAN SPOUSE.**—

“(A) **NO DESCENDANTS.**—A surviving non-Indian spouse of the decedent shall receive a life estate in each of the intestate interests of the decedent pursuant to section 207(b)(2) if the decedent is not survived by any children or grandchildren.

“(B) **DESCENDANTS.**—A surviving non-Indian spouse of the decedent shall receive a

life estate in one-half of the intestate interests of the decedent pursuant to section 207(b)(2) if the decedent is survived by at least one of the children or grandchildren of the decedent.

[(C) DESCENDANTS OTHER THAN SURVIVING NON-INDIAN SPOUSE.—The one-half life estate interest in each of the decedent's intestate interests that do not descend to the surviving non-Indian spouse under subparagraph (B) shall descend to the children of the decedent in equal shares, or to the grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the children of the decedent do not survive the decedent.

[(4) NO SURVIVING SPOUSE OR INDIAN HEIRS.—If the decedent is not survived by a spouse, a life estate in the intestate interests of the decedent shall descend in the following order:

[(A) To the children of the decedent in equal shares, or to the grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the children of the decedent do not survive the decedent.

[(B) If the decedent has no surviving children or grandchildren, to the surviving parents of the decedent.

[(5) REMAINDER INTEREST FROM LIFE ESTATES.—The remainder interest from a life estate established under paragraphs (3) and (4) shall descend in the following order:

[(A) To the Indian children of the decedent in equal shares, or to the Indian grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the children of the decedent do not survive the decedent.

[(B) If there are no surviving Indian children or grandchildren of the decedent, to the surviving Indian parent of the decedent or to both of the surviving Indian parents of the decedent as joint tenant with the right of survivorship.

[(C) If there is no surviving Indian child, grandchild, or parent, to the surviving Indian brothers or sisters of the decedent in equal shares.

[(D) If there is no surviving Indian descendant or parent, brother or sister, the intestate interests of the decedent shall descend, or may be acquired, as provided for in section 207(a)(3)(B), 207(a)(4), or 207(a)(5).

[(c) SPECIAL RULE RELATING TO SURVIVAL.—For purposes of this section, an individual who fails to survive a decedent by at least 120 hours is deemed to have predeceased the decedent for purposes of intestate succession, and the heirs of the decedent shall be determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by at least 120 hours, such individual shall be deemed to have failed to survive for the required time-period for purposes of the preceding sentence.

[(d) PRETERMITTED SPOUSES AND CHILDREN.—

[(1) SPOUSES.—For purposes of this section, if the surviving spouse of a testator married the testator after the testator executed his or her will, the surviving spouse shall receive the intestate share in trust or restricted land that such spouse would have otherwise received if the testator had died intestate. The preceding sentence shall not apply to an interest in trust or restricted lands where—

[(A) the will is executed before the date specified in section 234(a);

[(B) the testator's spouse is a non-Indian and the testator has devised his or her interests in trust or restricted land to an Indian or Indians;

[(C) it appears from the will or other evidence that the will was made in contempla-

tion of the testator's marriage to the surviving spouse;

[(D) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

[(E) the testator provided for the spouse by a transfer of funds or property outside of the will and an intent that the transfer be in lieu of a testamentary provision is demonstrated by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

[(2) CHILDREN.—For purposes of this section, if a testator executed his or her will prior to the birth of 1 or more children of the testator and the omission is the product of inadvertence rather than an intentional omission, such children shall share in the decedent's intestate interests in trust or restricted lands as if the decedent had died intestate. Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (54 Stat 746) shall be treated as a decedent's child under this section.

[(e) DIVORCE.—

[(A) SURVIVING SPOUSE.—

[(1) IN GENERAL.—For purposes of this section, an individual who is divorced from the decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, such individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife shall not be considered a divorce for purposes of this subsection.

[(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to prevent an entity responsible for adjudicating interests in trust or restricted land from giving force and effect to a property right settlement if one of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

[(2) EFFECT OF SUBSEQUENT DIVORCE ON A WILL OR DEVISE.—If after executing a will the testator is divorced or the marriage of the testator is annulled, upon the effective date of the divorce or annulment any disposition of interests in trust or restricted land made by the will to the former spouse shall be deemed to be revoked unless the will expressly provides otherwise. Property that is prevented from passing to a former spouse based on the preceding sentence shall pass as if the former spouse failed to survive the decedent. Any provision of a will that is revoked solely by operation of this paragraph shall be revived by the testator's remarriage to the former spouse.

[(f) NOTICE.—To the extent practicable, the Secretary shall notify the owners of trust and restricted land of the provisions of this title. Such notice may, at the discretion of the Secretary, be provided together with the notice required under section 207(g).

SEC. 233. COLLECTION OF PAST-DUE AND OVER-DUE CHILD SUPPORT

[(The Secretary shall establish procedures to provide for the collection of past-due or over-due support obligations entered by a tribal court or any other court of competent jurisdiction from the revenue derived from an interests in trust or restricted land.

SEC. 234. EFFECTIVE DATE.

[(a) IN GENERAL.—The provisions of this title shall not apply to the estate of an individual who dies prior to the later of—

[(1) the date that is 1 year after the date of enactment of this subtitle; or

[(2) the date specified in section 207(g)(5)."

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

[(1) by inserting after section 202, the following:

["**Subtitle A—General Land Consolidation**";

[(2) in section 206 (25 U.S.C. 2205)—

[(A) in subsection (a)(3)—

[(i) by striking "The Secretary" and inserting the following:

["(A) IN GENERAL.—The Secretary"; and

[(ii) by adding at the end the following:

["(B) TRIBAL PROBATE CODES.—A tribal probate code shall not prevent the devise of an interest in trust or restricted land to non-members of the tribe unless the code—

[(i) provides for the renouncing of interests, reservation of life estates, and payment of fair market value in the manner prescribed under subsection (c)(2); and

[(ii) does not prohibit the devise of an interest in an allotment to an Indian person if such allotment was originally allotted to the lineal ancestor of the devisee."; and

[(B) in subsection (c)(2)—

[(i) in subparagraph (A)—

[(I) by striking "IN GENERAL.—Paragraph" and inserting the following:

["(A) NONAPPLICABILITY TO CERTAIN INTERESTS.—

[(i) IN GENERAL.—Paragraph";

[(II) by striking "if, while" and inserting the following: "if—

[(I) while";

[(III) by striking the period and inserting "or";

[(IV) by adding at the end thereof the following:

["(II) the interest is part of a family farm that is devised to a member of the decedent's family if the devisee agrees that the Indian tribe that exercises jurisdiction over the land will have the opportunity to acquire the interest for fair market value if the interest is offered for sale to an entity that is not a member of the family of the owner of the land.

[(ii) RULE OF CONSTRUCTION.—Nothing in clause (i)(II) shall be construed to prevent or limit the ability of an owner of land to which such clause applies to mortgage such land or to limit the right of the entity holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement pursuant to applicable law."; and

[(ii) in subparagraph (B), by striking "207(a)(6)(B)" and inserting "207(a)(6)";

[(3) in section 207 (25 U.S.C. 2206)—

[(A) in subsection (a)(6), by striking subparagraph (A) and inserting the following:

["(A) DEVISE TO OTHERS.—

[(i) IN GENERAL.—Notwithstanding paragraph (2), an owner of trust or restricted land—

[(I) who does not have an Indian spouse or an Indian lineal descendant may devise his or her interests in such land to his or her spouse, lineal descendant, heirs of the first or second degree, or collateral heirs of the first or second degree;

[(II) who does not have a spouse or an Indian lineal descendant may devise his or her interests in such land to his or her lineal descendant, heirs of the first or second degree, or collateral heirs of the first or second degree; or

[(III) who does not have a spouse or lineal descendant may devise his or her interests in such land to his or her heirs of the first or second degree, or collateral heirs of the first or second degree.

[(ii) RULE OF CONSTRUCTION.—Any devise of an interest in trust or restricted land under clause (i) to a non-Indian will be construed to devise a life estate unless the devise explicitly states that the testator intends for the devisee to take the interest in fee.

[(B) UNEXERCISED RIGHTS OF REDEMPTION.—

“(i) IN GENERAL.—This subparagraph (B) shall only apply to interests in trust or restricted land that are held in trust or restricted status as of the date of enactment of the Indian Probate Reform Act of 2001, and interests in any parcel of land, at least a portion of which is in trust or restricted status as of such date of enactment, that is subject to a tax sale, tax foreclosure proceeding, or similar proceeding.

“(ii) EXERCISE OF RIGHT.—If the owner of such an interest referred to in clause (i) fails or refuses to exercise any right of redemption that is available to that owner under applicable law, the Indian tribe that exercises jurisdiction over the trust or restricted land referred to in such clause may exercise such right of redemption.

“(iii) PENALTIES AND ASSESSMENTS.—To the extent permitted under the Constitution of the United States, an Indian tribe acquiring an interest under clause (i) may acquire such an interest without being required to pay—

“(I) penalties; or

“(II) past due assessments that exceed the fair market value of the interest.”; and

“(B) in subsection (g)(5), by striking “this section” and inserting “subsections (a) and (b)”;

“(4) in section 217 (25 U.S.C. 2216)—

“(A) in subsection (e)(3), by striking “prospective applicants for the leasing, use, or consolidation of” and insert “any person that is leasing, using or consolidating, or is applying to, lease, use, or consolidate.”; and

“(B) in subsection (f)—

“(i) by striking “After the expiration of the limitation period provided for in subsection (b)(2) and prior” and inserting “Prior”;

“(ii) by striking “sold, exchanged, or otherwise conveyed under this section”.

“(c) ISSUANCE OF PATENTS.—Section 5 of the Act of February 8, 1887 (24 Stat. 348) is amended by striking the second proviso and inserting the following: “Provided, That the rules of intestate succession under the Indian Land Consolidation Act, or a tribal probate code approved under such Act and regulations, shall apply thereto after such patents have been executed and delivered.”

SECTION 1. SHORT TITLE.

This Act may be cited as the “Indian Probate Reform Act of 2002”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The General Allotment Act of 1887 (commonly known as the ‘Dawes Act’), which authorized the allotment of Indian reservations, did not allow Indian allotment owners to provide for the testamentary disposition of the land that was allotted to those owners.

(2) The Dawes Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment.

(3) The Federal Government’s reliance on the State law of intestate succession with respect to the descendency of allotments has resulted in numerous problems affecting Indian tribes, their members, and the Federal Government. Those problems include—

(A) the increasing fractionated ownership of trust and restricted land as that land is inherited by successive generations of owners as tenants in common;

(B) the application of different rules of intestate succession to each of a decedent’s interests in trust and restricted land if that land is located within the boundaries of more than 1 State, which application makes probate planning unnecessarily difficult and impedes efforts to provide probate planning assistance or advice;

(C) the absence of a uniform general probate code for trust and restricted land which makes

it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which is unfair to the owners of trust and restricted land and their heirs and devisees and which makes probate planning more difficult.

(4) Based on the problems identified in paragraph (3), a uniform Federal probate code would likely—

(A) reduce the number of unnecessary fractionated interests in trust or restricted land;

(B) facilitate efforts to provide probate planning assistance and advice;

(C) facilitate inter-tribal efforts to produce tribal probate codes pursuant to section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205); and

(D) provide essential elements of general probate law that are not applicable on the date of enactment of this subtitle to interests in trust or restricted land.

SEC. 3. INDIAN PROBATE REFORM.

(a) TESTAMENTARY DISPOSITION.—Subsection (a) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206(a)) is amended to read as follows:

“(a) TESTAMENTARY DISPOSITION.—

“(1) GENERAL DEVISE OF AN INTEREST IN TRUST OR RESTRICTED LAND.—

“(A) IN GENERAL.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, or a tribal probate code enacted pursuant to section 206, the owner of an interest in trust or restricted land may devise such an interest to the Indian tribe with jurisdiction over the land so devised, or to any Indian in trust or restricted status or as a passive trust interest (as provided for in section 207A).

“(B) STATUS.—The devise of an interest in trust or restricted land to an Indian under subparagraph (A) shall not alter the status of such an interest as a trust or restricted interest unless the testator provides that the interest is to be held as a passive trust interest.

“(2) DEVISE OF TRUST OR RESTRICTED LAND IN PASSIVE TRUST OR FEE STATUS.—

“(A) IN GENERAL.—Any interest in trust or restricted land that is not devised pursuant to paragraph (1) may only be devised—

“(i) as a life estate to any non-Indian person (the remainder interest may only be devised pursuant to clause (ii), subparagraph (C), or paragraph (1)(A));

“(ii) (I) to the testator’s lineal descendant or heir of the 1st or 2nd degree as a passive trust interest (to be known as an ‘eligible passive trust devisee’); or

“(II) if the testator does not have an heir of the 1st or 2nd degree or a lineal descendant, to any lineal descendant of a testator’s grandparent as a passive trust interest (to be known as an ‘eligible passive trust devisee’); or

“(iii) in fee status as provided for in subparagraph (C).

“(B) PRESUMED DEVISE OF PASSIVE TRUST INTEREST.—Any devise to an eligible passive trust devisee, including the devise of a remainder interest from the devise of a life estate under subparagraph (A)(ii), that does not indicate whether the interest is devised as a passive trust interest or a fee interest shall be construed to devise a passive trust interest.

“(C) DEVISE OF A FEE INTEREST.—Subject to subparagraph (D), any interest in trust or restricted land that is not devised pursuant to paragraph (1), or devised to an eligible passive trust devisee pursuant to subparagraph (A), may be devised to a non-Indian in fee status.

“(D) LIMITATION.—Any interest in trust or restricted land that is subject to section 4 of the Act of June 18, 1934 (25 U.S.C. 464) may only be devised pursuant to such section 4, subparagraph (A) of this paragraph, or paragraph (1) of this subsection.

“(3) DEVISE OF A PASSIVE TRUST INTEREST.—

“(A) IN GENERAL.—The holder of an interest in trust or restricted land that is held as a passive trust interest may devise the interest as a passive trust interest only to—

“(i) any Indian or the Indian tribe that exercises jurisdiction over the interest;

“(ii) the holder’s lineal descendants or heirs of the first or second degree;

“(iii) any living descendant of the decedent from whom the holder acquired the interest by devise or descent; and

“(iv) any person who owns a pre-existing interest or a passive trust interest in the same parcel of land if the pre-existing interest is held in trust or restricted status or in passive trust status.

“(B) INELIGIBLE DEVISEES AND INTESTATE SUCCESSION.—A passive trust interest that is devised to a person who is not eligible under subparagraph (A) or that is not disposed of by a valid will shall pass pursuant to the applicable law of intestate succession as provided for in subsection (b).”.

(b) INTESTATE SUCCESSION.—Subsection (b) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206(b)) is amended to read as follows:

“(b) INTESTATE SUCCESSION.—

“(1) RULES OF DESCENT.—

“(A) IN GENERAL.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, any interest in trust or restricted land that is not disposed of by a valid will shall—

“(i) descend according to a tribal probate code that is approved pursuant to section 206; or

“(ii) in the case of an interest in trust or restricted land to which such a code does not apply, be considered an ‘intestate interest’ and descend pursuant to paragraph (2), this Act, and other applicable Federal law.

“(B) CLASSIFICATIONS.—For purposes of applying this subsection, intestate interests referred to in subparagraph (A)(ii) shall be classified as either—

“(i) a devise or inheritance interest (an interest acquired by a decedent through devise or inheritance); or

“(ii) an acquired interest (an interest acquired by a decedent by any means other than devise or inheritance and an interest acquired by a decedent through devise or inheritance)—

“(I) if the decedent—

“(aa) acquired additional undivided interests in the same parcel as the interest, by a means other than devise or inheritance; or

“(bb) acquired land adjoining the parcel of land that includes the interest; or

“(II) if the parcel of land that includes the interest includes the decedent’s spouse’s residence.

“(2) INTESTATE SUCCESSION.—An interest in trust or restricted land described in paragraph (1)(A)(ii) (an intestate interest) shall descend as provided for in this paragraph:

“(A) SURVIVING INDIAN SPOUSE.—If a decedent is survived by an Indian spouse and the decedent’s estate includes—

“(i) one or more acquired interests, the decedent’s spouse shall receive all such acquired interests;

“(ii) one or more devise or inheritance interests, and—

“(I) the decedent is not survived by an Indian heir of the first or second degree, the decedent’s spouse shall receive all such devise or inheritance interests; or

“(II) the decedent is survived by an Indian heir of the first or second degree, the decedent’s devise or inheritance interest shall descend pursuant to paragraph (3)(A).

“(B) SURVIVING NON-INDIAN SPOUSE.—If a decedent is survived by a non-Indian spouse and the decedent’s estate includes—

“(i) one or more acquired interests, the decedent’s spouse shall receive a life estate in such acquired interest, and if the decedent is—

“(I) survived by an Indian heir of the 1st or 2nd degree, the remainder interests shall descend pursuant to paragraph (3)(A); or

“(II) not survived by an Indian heir of the 1st or 2nd degree, the remainder interest shall descend pursuant to paragraph (3)(C); or

“(ii) one or more devise or inheritance interests, and the decedent is—

“(I) survived by an Indian heir of the 1st or 2nd degree, such devise or inheritance interests shall descend pursuant to paragraph (3)(A); or

“(II) not survived by an Indian heir of the 1st or 2nd degree, such devise or inheritance interest shall descend pursuant to paragraph (3)(C).

“(C) NO SURVIVING SPOUSE.—If the decedent is not survived by a spouse, and the decedent's estate includes one or more acquired interests or one or more devise or inheritance interests and the decedent is—

“(i) survived by an Indian heir of the 1st or 2nd degree, the acquired interests or devise or inheritance interests shall descend pursuant to paragraph (3)(A);

“(ii) not survived by an Indian heir of the 1st or 2nd degree, the acquired interests or devise or inheritance interests shall descend pursuant to paragraph (3)(C).

“(3) RULES APPLICABLE TO INTESTATE SUCCESSION.—

“(A) INDIAN HEIRS.—For purposes of this subsection, Indian heirs of the 1st or 2nd degree shall inherit in the following order:

“(i) The Indian children of the decedent, in equal shares, or if one or more of those Indian children do not survive the decedent, such Indian children of the decedent's deceased child shall inherit by right of representation;

“(ii) If the decedent has no Indian children or grandchildren (that take by representation under clause (i)), to the decedent's Indian brothers and sisters in equal shares.

“(iii) If the decedent has no Indian brothers or sisters, to the decedent's Indian parent or parents.

“(B) RIGHT OF REPRESENTATION.—For purpose of this subsection, in any case involving the determination of a right of representation—

“(i) each interest in trust land shall be equally divided into a number of shares that equals the sum of—

“(I) the number of surviving heirs in the nearest degree of kinship; and

“(II) the number of deceased persons in that same degree, if any, who left issue who survive the decedent;

“(ii) each surviving heir described in clause (i)(I) shall receive 1 share; and

“(iii)(I) each deceased person described in clause (i)(II) shall receive 1 share; and

“(II) that share shall be divided equally among the surviving issue of the deceased person.

“(C) NO INDIAN HEIRS.—

“(i) IN GENERAL.—For purposes of this subsection, if a decedent does not have an Indian heir of the 1st or 2nd degree, an interest shall descend to an Indian collateral heir who is a co-owner of an interest owned by the decedent if any.

“(ii) MULTIPLE COLLATERAL HEIRS.—If—

“(I) more than one Indian collateral heir owns an interest in an interest referred to in clause (i), the interest shall descend to the collateral heir that owns the largest undivided interest in the parcel; or

“(II) two or more collateral heirs own equal shares in an interest referred to in clause (i), the interest passing pursuant to this subsection shall be divided equally between those collateral heirs that own equal shares.

“(iii) NO OWNERSHIP.—If none of the decedent's collateral heirs own an interest in the interest referred to in clause (i), the interest shall descend to the Indian tribe that exercises jurisdiction over the parcel of trust or restricted lands involved, subject to clause (iv).

“(iv) ACQUISITION OF INTEREST.—Notwithstanding clause (iii), an Indian co-owner of a parcel of trust or restricted land may acquire an interest subject to such clause by paying into the decedent's estate, before the close of the probate of the decedent's estate, the fair market value of the interest in such land. If more than 1 Indian co-owner (including the Indian tribe referred to in clause (iii)) offers to pay for such an interest, the highest bidder shall acquire the interest.

“(v) DEFINITION.—In this subparagraph, the term ‘collateral heir’ means the decedent's aunt, niece, nephew, and first cousin.

“(4) SPECIAL RULE RELATING TO SURVIVAL.—For purposes of this section, an individual who fails to survive a decedent by at least 120 hours is deemed to have predeceased the decedent for the purposes of intestate succession, and the heirs of the decedent shall be determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by at least 120 hours, the individual shall be deemed to have failed to survive for the required time-period for the purposes of the preceding sentence.

“(5) PRETERMITTED SPOUSES AND CHILDREN.—

“(A) SPOUSES.—For the purposes of this section, if the surviving spouse of a testator married the testator after the testator executed his or her will, the surviving spouse shall receive the intestate share in trust or restricted land that the spouse would have otherwise received if the testator had died intestate. The preceding sentence shall not apply to an interest in trust or restricted land where—

“(i) the will is executed before the date of enactment of this subsection;

“(ii) the testator's spouse is a non-Indian and the testator has devised his or her interests in trust or restricted land to an Indian or Indians;

“(iii) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

“(iv) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

“(v) the testator provided for the spouse by a transfer of funds or property outside of the will and an intent that the transfer be in lieu of a testamentary provision is demonstrated by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

“(B) CHILDREN.—For the purposes of this section, if a testator executed his or her will prior to the birth or adoption of 1 or more children of the testator and the omission is the product of inadvertence rather than an intentional omission, those children shall share in the decedent's intestate interests in trust or restricted land as if the decedent had died intestate. Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (54 Stat 746), shall be treated as a decedent's child under this section.

“(6) DIVORCE.—

“(A) SURVIVING SPOUSE.—

“(i) IN GENERAL.—For the purposes of this section, an individual who is divorced from the decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife shall not be considered a divorce for the purposes of this subsection.

“(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall be construed to prevent an entity responsible for adjudicating interests in trust or restricted land from giving force and effect to a property right settlement if one of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

“(B) EFFECT OF SUBSEQUENT DIVORCE ON A WILL OR DEVISE.—If after executing a will the testator is divorced or the marriage of the testator is annulled, upon the effective date of the divorce or annulment any disposition of inter-

ests in trust or restricted land made by the will to the former spouse shall be deemed to be revoked unless the will expressly provides otherwise. Property that is prevented from passing to a former spouse based on the preceding sentence shall pass as if the former spouse failed to survive the decedent. Any provision of a will that is revoked solely by operation of this paragraph shall be revived by the testator's remarriage to the former spouse.

“(7) NOTICE.—To the extent practicable, the Secretary shall notify the owners of trust and restricted land of the provisions of this Act. The notice may, at the discretion of the Secretary, be provided together with the notice required under section 207(g).”

(c) RULE OF CONSTRUCTION.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by adding at the end the following:

“(h) RULE OF CONSTRUCTION.—For purposes of subsections (a) and (b), any reference to ‘applicable Federal law’ shall be construed to include Public Law 91-627 (84 Stat. 1874, amending section 7 of the Act of August 9, 1946), Public Law 92-377 (86 Stat. 530), and Public Law 92-443 (86 Stat. 744). Nothing in this section shall be construed to amend or alter such Public Laws or any other Federal law that provides for the devise and descent of any trust or restricted lands located on a specific Indian reservation.”

(d) PASSIVE TRUST STATUS FOR TRUST OR RESTRICTED LAND.—The Indian Land Consolidation Act is amended by inserting after section 207 (25 U.S.C. 2206) the following:

“SEC. 207A. PASSIVE TRUST STATUS FOR TRUST OR RESTRICTED LAND.

“(a) PASSIVE TRUST.—The owner of an interest in trust or restricted land may submit an application to the Secretary requesting that such interest be held in passive trust interest status. Such application may authorize the Secretary to amend or alter any existing lease or agreement with respect to the interest that is the subject of the application.

“(b) APPROVAL.—Upon the approval of an application by the Secretary under subsection (a), an interest in trust or restricted land shall be held as a passive trust interest in accordance with this section.

“(c) REQUIREMENTS.—Except as provided in this section, an interest in trust or restricted land that is held as a passive trust interest under this section—

“(1) shall continue to be covered under any applicable tax-exempt status and continue to be subject to any restrictions on alienation until such interest is patented in fee status;

“(2) may, without the approval of the Secretary, be—

“(A) leased;

“(B) mortgaged pursuant to the Act of March 29, 1956 (25 U.S.C. 483a); or

“(C) sold or conveyed to an Indian, the Indian tribe that exercises jurisdiction over the interest, or a co-owner of an interest in the same parcel of land if the co-owner owns a pre-existing trust, restricted interest, or a passive trust interest in the parcel; and

“(3) may be subject to an ordinance or resolution enacted under subsection (d).

“(d) ORDINANCE OR RESOLUTION FOR REMOVAL OF STATUS.—

“(1) IN GENERAL.—The governing body of the Indian tribe that exercises jurisdiction over an interest in trust or restricted land that is held as a passive trust interest in accordance with this section may enact an ordinance or resolution to allow the owner of such an interest to apply to the Secretary for the removal of the trust or restricted status of such portion of such lands that are subject to the tribe's jurisdiction.

“(2) REVIEW BY SECRETARY.—The Secretary shall review and may approve an ordinance or resolution enacted by an Indian tribe pursuant to paragraph (1) if the Secretary determines that the ordinance or resolution is consistent with this Act and will not increase fractionated ownership of Indian land.

“(e) REVENUES OR ROYALTIES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall not be responsible for the collection of or accounting for any lease revenues or royalties accruing to an interest held as a passive trust interest by any person under this section.

“(2) EXCEPTION.—Paragraph (1) shall not apply to an interest described in such paragraph if the Secretary approves an application to have such interest be taken into active trust status on behalf of an Indian or an Indian tribe pursuant to regulations enacted by the Secretary.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to alter the authority or responsibility of the Secretary, if any, with respect to an interest in trust or restricted land held in active trust status, including an undivided interest within the same parcel of land as an undivided passive trust interest.

“(f) JURISDICTION OVER PASSIVE TRUST INTEREST.—An Indian tribe that exercises jurisdiction over an interest in trust or restricted land that is devised or held as a passive trust interest under this section shall continue to exercise jurisdiction over the land that is held as a passive trust interest and any person holding, leasing, or otherwise using such land shall be deemed to have consented to the jurisdiction of such a tribe with respect to the use of such land, including any impacts associated with any use of such lands.

“(g) PROBATE OF PASSIVE TRUST INTERESTS.—An interest in trust or restricted land that is held as a passive trust interest under this section shall be subject to probate by the Secretary pursuant to this Act and other laws applicable to the probate of trust or restricted land. Any interested party may file an application to commence the probate of an interest in trust or restricted land held as a passive trust interest.

“(h) REGULATIONS.—The Secretary shall promulgate regulations to implement this section.”.

(e) PARTITION.—Section 205 of the Indian Land Consolidation Act (25 U.S.C. 2204) is amended by adding at the end the following:

“(c) PARTITION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, in accordance with this subsection and subject to paragraphs (2), (3), and (4)—

“(A) an Indian tribe may apply to the Secretary for the partition of a parcel of land that is—

“(i) located within the reservation of the Indian tribe; or

“(ii) otherwise under the jurisdiction of the Indian tribe; and

“(B) the Secretary may commence a process for partitioning a parcel of land as provided for in paragraphs (2)(B) and (6)(B), if—

“(i) an Indian tribe owns an undivided interest in the parcel of land and such tribe consents to the partition;

“(ii)(I) the tribe referred to in clause (i) meets the ownership requirement of clauses (i) or (ii) of paragraph (2)(B); or

“(II) the Secretary determines that it is reasonable to believe that the partition would be in accordance with paragraph (2)(B)(iii); and

“(iii) the tribe referred to in paragraph (3), if any, consents to the partition.

For purposes of this subsection, the term ‘eligible Indian tribe’ means an Indian tribe described in subparagraph (A) and (B)(i).

“(2) TRIBAL OWNERSHIP.—A parcel of land may be partitioned under this subsection if, with respect to the eligible Indian tribe involved—

“(A) the tribe owns an undivided interest in the parcel of land; and

“(B)(i) the tribe owns 50 percent or more of the undivided interest in the parcel;

“(ii) the tribe is the owner of the largest quantity of undivided interest in the parcel; or

“(iii) the owners of undivided interests equal to at least 50 percent of the undivided interests

in the parcel (including any undivided interest owned by the tribe) consent or do not object to the partition.

“(3) TRIBAL CONSENT.—A parcel of land that is located within the reservation of an Indian tribe or otherwise under the jurisdiction of an Indian tribe shall be partitioned under this subsection only if the Indian tribe does not object to the partition.

“(4) APPLICABILITY.—This subsection shall not apply to any parcel of land that is the bona fide residence of any person unless the person consents to the partition in writing.

“(5) PARTITION IN KIND.—

“(A) IN GENERAL.—The Secretary shall commence the partition process described in subparagraph (B) if—

“(i) an eligible Indian tribe applies to partition a parcel of land under this paragraph; and

“(ii)(I) the Secretary determines that the Indian tribe meets the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B); or

“(II) the Secretary determines that it is reasonable to believe that the partition would be in accordance with paragraph (2)(B)(iii).

“(B) PARTITION PROCESS.—In carrying out any partition, the Secretary shall—

“(i) provide, to each owner of any undivided interest in the parcel to be partitioned, through publication or other appropriate means, notice of the proposed partition;

“(ii) make available to any interested party a copy of any proposed partition plan submitted by an Indian tribe or proposed by the Secretary; and

“(iii) review—

“(I) any proposed partition plan submitted by any owner of an undivided interest in the parcel; and

“(II) any comments or objections concerning a partition, or any proposed plan of partition, submitted by any owner or any other interested party.

“(C) DETERMINATION NOT TO PARTITION.—If the Secretary determines that a parcel of land cannot be partitioned in a manner that is fair and equitable to the owners of the parcel, the Secretary shall inform each owner of the parcel of—

“(i) the determination of the Secretary; and

“(ii) the right of the owner to appeal the determination.

“(D) PARTITION WITH CONSENT OF QUALIFIED INDIAN TRIBE.—If the Secretary determines that a parcel of land may be partitioned in a manner that is fair and equitable to the owners of the parcel, and the Indian tribe meets the applicable ownership requirements under clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

“(i) approve a plan of partition;

“(ii) provide notice to the owners of the parcel of the determination of the Secretary;

“(iii) make a copy of the plan of partition available to each owner of the parcel; and

“(iv) inform each owner of the right to appeal the determination of the Secretary to partition the parcel in accordance with the plan.

“(E) PARTITION WITH CONSENT; IMPLIED CONSENT.—If the Secretary determines that a parcel may be partitioned in a manner that is fair and equitable to the owners of the parcel, but the Indian tribe involved does not meet the applicable ownership requirements under clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

“(i)(I) make a plan of partition available to the owners of the parcel; and

“(II) inform the owners that the parcel will be partitioned in accordance with the plan if the owners of 50 percent or more of undivided ownership interest in the parcel either—

“(aa) consent to the partition; or

“(bb) do not object to the partition by such deadline as may be established by the Secretary;

“(ii) if the owners of 50 percent or more of undivided ownership interest in the parcel consent to the partition or do not object by a deadline established by the Secretary under clause

(i)(II)(bb), inform the owners of the parcel that—

“(I) the plan for partition is final; and

“(II) the owners have the right to appeal the determination of the Secretary to partition the parcel; and

“(iii) if the owners of 50 percent or more of the undivided ownership interest in the parcel object to the partition, inform the Indian tribe of the objection.

“(F) SUCCESSIVE PARTITION PLANS.—In carrying out subparagraph (E) in accordance with paragraph (2)(B)(iii), the Secretary may, in accordance with subparagraph (E)—

“(i) approve 1 or more successive plans of partition; and

“(ii) make those plans available to the owners of the parcel.

“(G) PLAN OF PARTITION.—A plan of partition approved by the Secretary in accordance with subparagraph (D) or (E)—

“(i) may determine that 1 or more of the undivided interests in a parcel are not susceptible to a partition in kind;

“(ii) may provide for the sale or exchange of those undivided interests to—

“(I) 1 or more of the owners of undivided interests in the parcel; or

“(II) the Secretary in accordance with section 213; and

“(iii) shall provide that the sale of any undivided interest referred to in clause (ii) shall be for not less than the fair market value of the interest.

“(6) PARTITION BY SALE.—

“(A) IN GENERAL.—The Secretary shall commence the partition process described in subparagraph (B) if—

“(i) an eligible Indian tribe applies to partition a parcel of land under this subsection; and

“(ii)(I) the Secretary determines that the Indian tribe meets the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B); or

“(II) the Secretary determines that it is reasonable to believe that the partition would be in accordance with paragraph (2)(B)(iii).

“(B) PARTITION PROCESS.—In carrying out any partition of a parcel, the Secretary—

“(i) shall conduct a preliminary appraisal of the parcel;

“(ii) shall provide, to the owners of the parcel, through publication or other appropriate means—

“(I) notice of the application of the Indian tribe to partition the parcel; and

“(II) access to the preliminary appraisal conducted in accordance with clause (i);

“(iii) shall inform each owner of the parcel of the right to submit to the Secretary comments relating to the preliminary appraisal;

“(iv) may, based on comments received under clause (iii), modify the preliminary appraisal or provide for the conduct of a new appraisal; and

“(v) shall—

“(I) issue a final appraisal for the parcel;

“(II) provide to the owners of the parcel and the appropriate Indian tribes access to the final appraisal; and

“(III) inform the Indian tribes of the right to appeal the final appraisal.

“(C) PURCHASE BY QUALIFIED INDIAN TRIBE.—If an eligible Indian tribe agrees to pay fair market value for a partitioned parcel, as determined by the final appraisal of the parcel issued under subparagraph (B)(v)(I) (including any appraisal issued by the Secretary after an appeal by the Indian tribe under subparagraph (B)(v)(III)), and the Indian tribe meets the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

“(i) provide to each owner of the parcel notice of the decision of the Indian tribe; and

“(ii) inform the owners of the right to appeal the decision (including the right to appeal any final appraisal of the parcel referred to in subparagraph (B)(v)(III)).

“(D) PARTITION WITH CONSENT; IMPLIED CONSENT.—

“(i) *IN GENERAL.*—If an eligible Indian tribe agrees to pay fair market value for a partitioned parcel, as determined by the final appraisal of the parcel issued under subparagraph (B)(v)(I) (including any appraisal issued by the Secretary after an appeal by the Indian tribe under subparagraph (B)(v)(III)), but does not meet the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

“(I) provide notice to the owners of the undivided interest in the parcel; and

“(II) inform the owners that the parcel will be partitioned by sale unless the partition is opposed by the owners of 50 percent or more of the undivided ownership interest in the parcel.

“(ii) *FAILURE TO OBJECT TO PARTITION.*—If the owners of 50 percent or more of undivided ownership interest in or to a parcel consent to the partition or the parcel, or do not object to the partition by such deadline as may be established by the Secretary, the Secretary shall inform the owners of the parcel of the right to appeal the determination of the Secretary (including the results of the final appraisal issued under subparagraph (B)(v)(I)).

“(iii) *OBJECTION TO PARTITION.*—If the owners of 50 percent or more of the undivided ownership interest in a parcel object to the partition of the parcel—

“(I) the Secretary shall notify the Indian tribe of the objection; and

“(II) the Indian tribe and the Secretary may agree to increase the amount offered to purchase the undivided ownership interests in the parcel.

“(7) *ENFORCEMENT.*—

“(A) *IN GENERAL.*—If, with respect to a parcel, a partition in kind is approved under subparagraph (D) or (E) of paragraph (5), or a partition by sale is approved under paragraph (6)(C), and the owner of an interest in or to the parcel fails or refuses to convey the interest to the Indian tribe, the Indian tribe or the United States may—

“(i) bring a civil action in the United States district court for the district in which the parcel is located; and

“(ii) request the court to issue an appropriate order for the partition in kind, or partition by sale to the Indian tribe, of the parcel.

“(B) *FEDERAL ROLE.*—With respect to any civil action brought under subparagraph (A)—

“(i) the United States—

“(I) shall receive notice of the civil action; and

“(II) may be a party to the civil action; and

“(ii) no civil action brought under this section shall be dismissed, and no relief requested shall be denied, on the ground that the civil action is against the United States or that the United States is an indispensable party.”

SEC. 4. OTHER AMENDMENTS.

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

(1) in section 205(a) (25 U.S.C. 2204(a)), by striking “over 50 per centum of the undivided interests” and inserting “undivided interests equal to at least 50 percent of the undivided interest”;

(2) in section 206 (25 U.S.C. 2205)—

(A) in subsection (a), by striking paragraph (3) and inserting the following:

“(3) *TRIBAL PROBATE CODES.*—The Secretary shall not approve a tribal probate code, or an amendment to such a code, that prevents the devise of an interest in trust or restricted land to—

“(A) an Indian lineal descendant of the original allottee; or

“(B) to an Indian who is not a member of the tribe that exercises jurisdiction over such an interest;

unless the code provides for the renouncing of interests (to eligible devisees pursuant to such a code), the opportunity for a devisee who is the testator’s spouse or lineal descendant to reserve a life estate, and payment of fair market value

in the manner prescribed under subsection (c)(2).”;

(B) in subsection (c)(1)—

(i) by striking “section 207(a)(6)(A)” and inserting “sections 207(a)(2)(A)(ii), 207(a)(2)(C), and 207(a)(3)”; and

(ii) by striking the last sentence and inserting “The Secretary shall transfer such payments to any person or persons who would have received an interest in land if the interest had not been acquired by the tribe pursuant to this paragraph.”; and

(C) in subsection (c)(2)—

(i) in subparagraph (A)—

(I) by striking “(A) *IN GENERAL.*—Paragraph” and inserting the following:

“(A) *NONAPPLICABILITY TO CERTAIN INTERESTS.*—

“(i) *IN GENERAL.*—Paragraph”;

(II) by striking “if, while” and inserting the following: “if—

“(I) while”;

(III) by striking the period and inserting “; or”;

(IV) by adding at the end the following:

“(II) the interest is part of a family farm that is devised to a member of the decedent’s family if the devisee agrees that the Indian tribe that exercises jurisdiction over the land will have the opportunity to acquire the interest for fair market value if the interest is offered for sale to an entity that is not a member of the family of the owner of the land.

“(ii) *RECORDING OF INTEREST.*—Upon the request of an Indian tribe described in clause (i)(II), a restriction relating to the acquisition by such tribe of an interest in the family farm involved shall be recorded as part of the deed relating to the interest involved.

“(iii) *RULE OF CONSTRUCTION.*—Nothing in clause (i)(II) shall be construed to prevent or limit the ability of an owner of land to which that clause applies to mortgage the land or to limit the right of the entity holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement pursuant to applicable law.

“(iv) *DEFINITION.*—In this paragraph, the term ‘member of the decedent’s family’ means the decedent’s lineal descendant, a lineal descendant of the grandparent of the decedent, the spouse of any such descendant, or the decedent’s spouse.”; and

(i) in subparagraph (B), by striking “subparagraph (A)” and all that follows through “207(a)(6)(B)” and inserting “paragraph (1)”; and

(3) in section 207 (25 U.S.C. 2206)—

(A) in subsection (c)—

(i) by redesignating paragraph (3) as paragraph (4); and

(ii) by inserting after paragraph (2) the following:

“(3) *ALIENATION OF JOINT TENANCY INTERESTS.*—

“(A) *IN GENERAL.*—With respect to any interest held as a joint tenancy pursuant to this subsection—

“(i) nothing in this subsection shall be construed to alter the ability of the owner of such an interest to convey a life estate in the owner’s undivided joint tenancy interest; and

“(ii) only the last remaining owner of such an interest may devise or convey more than a life estate in such an interest.

“(B) *APPLICATION OF PROVISION.*—This paragraph shall not apply to any conveyance, sale, or transfer that is part of an agreement referred to in subsection (e) or to a co-owner of a joint tenancy interest.”; and

(B) in subsection (g)(5), by striking “this section” and inserting “subsections (a) and (b)”; and

(4) in section 213 (25 U.S.C. 2212)—

(A) in subsection (a)(2), by striking “(A) *IN GENERAL.*—” and all that follows through “subparagraph (A), the Secretary” and inserting “The Secretary”;

(B) in subsection (b)(4), by inserting before the period the following: “through the use of poli-

cies and procedures designed to accommodate the voluntary sale of interests under the pilot program (established by this Act) though the elimination of duplicate conveyance documents, administrative proceedings, and transactions, notwithstanding the existence of any otherwise applicable policy, procedure, or regulation”;

and

(C) in subsection (c)—

(i) in paragraph (1)(A), by striking “landowner upon payment” and all that follows through the period and inserting the following: “landowner—

“(i) upon payment by the Indian landowner of the amount paid for the interest by the Secretary; or

“(ii) if the Indian referred to in this subparagraph provides assurance that the purchase price will be paid by pledging revenue from any source, including trust resources, and the Secretary determines that the purchase price will be paid in a timely and efficient manner.”;

(ii) in paragraph (1)(B), by inserting “unless the interest is subject to a foreclosure of a mortgage pursuant to the Act of March 29, 1956 (25 U.S.C. 483a)” before the period; and

(iii) in paragraph (3), by striking “10 percent of more of the undivided interests” and inserting “an undivided interest”;

(5) in section 214 (25 U.S.C. 2213), by striking subsection (b) and inserting the following:

“(b) *APPLICATION OF REVENUE FROM ACQUIRED INTERESTS TO LAND CONSOLIDATION PILOT PROGRAM.*—

“(I) *IN GENERAL.*—The Secretary shall have a lien on any revenue accruing to an interest described under subsection (a) until the Secretary provides for the removal of the lien under paragraph (3) or (4).

“(2) *REQUIREMENTS.*—Until Secretary removes the lien from an interest of land as provided for in paragraph (1)—

“(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) any revenue derived from any interest acquired by the Secretary pursuant to section 213 shall be paid into the fund created under section 216; and

“(C) the Secretary may approve a transaction covered under this section on behalf of a tribe notwithstanding any other provision of law, including section 16 of the Act of June 18, 1934 (commonly referred to as the Indian Reorganization Act, (25 U.S.C. 476)).

“(3) *FINDINGS BY SECRETARY.*—The Secretary may remove a lien referred to in (1) if the Secretary makes a finding that—

“(A) the costs of administering the interest will equal or exceed the projected revenues for the parcel of land involved;

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

“(C) a subsequent decrease in the value of land or commodities associated with the parcel of 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.

“(4) *REMOVAL OF LIEN.*—Pursuant to the consultations referred to in section 213(b)(3), the Secretary shall periodically remove the lien referred to in paragraph (1) from interests in land acquired by the Secretary.”;

(6) in section 216 (25 U.S.C. 2215)—

(A) in subsection (a), strike paragraph (2) and insert the following:

“(2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 213 or paid by Indian landowners under section 213.”; and

(B) in subsection (b)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), by striking “Subject to paragraph (2), all” and inserting “All”;

(II) in subparagraph (A), by striking "and" at the end;

(III) in subparagraph (B), by striking the period and inserting "; and"; and

(IV) by adding at the end the following:

"(C) to be used to acquire undivided interests on the reservation where the income was derived."; and

(ii) by striking paragraph (2) and inserting the following:

"(2) USE OF FUNDS.—The Secretary may utilize the revenue deposited in the Acquisition Fund under paragraph (1) to acquire some or all of the undivided interests in any parcels of land pursuant to section 205.";

(7) in section 217 (25 U.S.C. 2216)—

(A) in subsection (e)(3), by striking "prospective applicants for the leasing, use, or consolidation of" and insert "any person that is leasing, using or consolidating, or is applying to, lease, use, or consolidate,"; and

(B) by striking subsection (f) and inserting the following:

"(f) PURCHASE OF LAND BY TRIBE.—

"(1) IN GENERAL.—Before the Secretary approves an application to terminate the trust status or remove the restrictions on alienation from a parcel of trust or restricted land, the Indian tribe that exercises jurisdiction over such a parcel shall have the opportunity to match any offer contained in such application, or where there is no purchase price offered, to acquire the interest in such land by paying the fair market value of such interest.

"(2) EXCEPTION FOR FAMILY FARMS.—Paragraph (1) shall not apply to a parcel of trust or restricted land that is part of a family farm that is conveyed to a member of the landowner's family (as defined in section 206(c)(2)(A)(iv)) if the tribe that exercises jurisdiction over the land is afforded the opportunity to purchase the interest if the interest is offered for sale to an entity that is not a member of the family of the owner of the land. Section 206(c)(2)(A) shall apply with respect to the recording and mortgaging of the trust or restricted land referred to in the preceding sentence."; and

(8) in section 219(b)(1)(A) (25 U.S.C. 2219(b)(1)(A)), by striking "100" and inserting "90".

(b) DEFINITION.—

(1) IN GENERAL.—Section 202(2) of the Indian Land Consolidation Act (25 U.S.C. 2201(2)) is amended—

(A) by striking "means any" and inserting the following: "means—

"(A) any";

(B) by striking "or any person who has been found to meet" and inserting the following: "or

"(B) any person who meets"; and

(C) by striking "if the Secretary" and all that follows through the semicolon and inserting ", except that the Secretary may promulgate regulations to exclude any definition if the Secretary determines that the definition is not consistent with the purposes of this Act, or

"(C) with respect to the ownership, devise, or descent of trust or restricted land in the State of California, any person who meets the definition of Indians of California as contained in section 1 of the Act of May 18, 1928 (25 U.S.C. 651), until otherwise provided by Congress pursuant to section 809(b) of Public Law 94-437 (25 U.S.C. 1679(b))";.

(2) EFFECTIVE DATE.—Any exclusion referred to in the amendment made by paragraph (1)(C) shall apply only to those decedents who die after the Secretary of the Interior promulgates the regulation providing for such exclusion.

(c) MORTGAGES AND DEEDS OF TRUST.—The Act of March 29, 1956 (25 U.S.C. 483a) is amended in the first sentence of subsection (a) by inserting "(including land owned by any person in passive trust status pursuant to section 207A of the Indian Land Consolidation Act)" after "land" the first place that such appears.

(d) ISSUANCE OF PATENTS.—Section 5 of the Act of February 8, 1887 (25 U.S.C. 348) is amend-

ed by striking the second proviso and inserting the following: "Provided, That the rules of intestate succession under the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act) shall apply thereto after those patents have been executed and delivered.".

(e) TRANSFERS OF RESTRICTED INDIAN LAND.—Section 4 of the Act of June 18, 1934 (25 U.S.C. 464), is amended in the first proviso by striking ", in accordance with" and all that follows through the colon and inserting "in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act):".

SEC. 5. EFFECTIVE DATE.

This amendment made by this Act shall not apply to the estate of an individual who dies prior to the later of—

(1) the date that is 1 year after the date of enactment of this Act; or

(2) the date specified in section 207(g)(5) of the Indian Land Consolidation Act (25 U.S.C. 2206(g)(5)).

Mr. REID. Mr. President, I ask unanimous consent that the substitute amendment be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1340), as amended, was read the third time and passed.

EXECUTIVE SESSION

NOMINATION DISCHARGED

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session and that the Rules Committee be discharged from further consideration of the following nomination and that the Senate then proceed to its consideration: Bruce James to be Public Printer. Further, I ask unanimous consent that the nomination be confirmed; that the motion to reconsider be laid upon the table; that any statements relating to the nomination be printed in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

Bruce R. James, of Nevada, to be Public Printer.

Mr. REID. Mr. President, Bruce James is from Nevada. He was in business and was very successful. He retired in Nevada after having been successful in business. He is a devout Republican. In fact, he ran against me at one time in a primary, but he made the mistake of having JOHN ENSIGN in the primary. He is a fine man. I have been to his home. He has a lovely wife. He really feels he wants to spend some

time in public service. He made his money in printing, so he should be a great Public Printer. I wish him and his family the best of luck as they move to Washington.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL FLOOD INSURANCE PROGRAM

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 13, introduced earlier today by Senator SARBANES.

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

The legislative clerk read as follows:

A bill (S. 13) to extend authorization for the national flood insurance program.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 13) was read three times and passed, as follows:

S. 13

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

SECTION 1. AUTHORIZATION FOR THE NATIONAL FLOOD INSURANCE PROGRAM.

The National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is amended—

(1) in section 1309(a)(2) (42 U.S.C. 4016(a)(2)), by striking "December 31, 2002" and inserting "December 31, 2003";

(2) in section 1319 (42 U.S.C. 4026), by striking "December 31, 2002" and inserting "December 31, 2003";

NATIONAL RUNAWAY PREVENTION MONTH

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from the consideration of S. Res. 339, and that the Senate proceed to its immediate consideration.

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

The legislative clerk read as follows:

A resolution (S. Res. 339) designating November 2002 as "National Runaway Prevention Month."

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.