

“(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—

“(i) is unfair to the owners of trust and restricted land (and heirs and devisees of owners); and

“(ii) makes probate planning more difficult;

“(4) a uniform Federal probate code would likely—

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

“(B) facilitate efforts to provide probate planning assistance and advice and create incentives for owners of trust and restricted land to engage in estate planning;

“(C) facilitate intertribal efforts to produce tribal probate codes in accordance with 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 Act [Oct. 27, 2004] to interests in trust or restricted land; and

“(5) the provisions of a uniform Federal probate code and other forth [sic] in this Act [see Short Title of 2004 Amendment note above] should operate to further the policy of the United States as stated in the Indian Land Consolidated Act Amendments of 2000, Public Law 106-462, [§]102, November 7, 2000, 114 Stat. 1992 [set out as a note below].”

Pub. L. 106-462, title I, §101, Nov. 7, 2000, 114 Stat. 1991, provided that: “Congress finds that—

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

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

“(3) many trust allotments were taken out of trust status, often without their owner’s consent;

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

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

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

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

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

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

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

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

“(B) the Secretarial Order also directed appropriate officials of the Bureau of Indian Affairs to distribute such interests ‘to the rightful heirs and beneficiaries without regard to 25 U.S.C. 2206’;

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

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

“(14) any devise or inheritance of an interest in trust or restricted Indian lands is a matter of Federal law; and

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

DECLARATION OF POLICY

Pub. L. 106-462, title I, §102, Nov. 7, 2000, 114 Stat. 1992, provided that: “It is the policy of the United States—

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

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

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

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

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

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 106-462, title I, §105, Nov. 7, 2000, 114 Stat. 2007, provided that: “There are authorized to be appropriated not to exceed \$8,000,000 for fiscal year 2001 and each subsequent fiscal year to carry out the provisions of this title [enacting sections 2205, 2206, and 2212 to 2219 of this title, amending this section and sections 348, 372, 373, 464, 2204, and 2207 of this title, repealing sections 331 to 333, 2205, and 2206 of this title, and enacting provisions set out as notes under this section and section 2206 of this title] (and the amendments made by this title) that are not otherwise funded under the authority provided for in any other provision of Federal law.”

§ 2202. Other applicable provisions

The provisions of section 465 of this title shall apply to all tribes notwithstanding the provisions of section 478 of this title: *Provided*, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s).

(Pub. L. 97-459, title II, §203, Jan. 12, 1983, 96 Stat. 2517.)

§ 2203. Adoption of land consolidation plan with approval of Secretary

(a) Statement of purpose; sales or exchanges; terms and conditions

Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings: *Provided*, That—