

“(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, 2204, 2207, and 5107 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 5108 of this title shall apply to all tribes notwithstanding the provisions of section 5125 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 land-holdings: *Provided*, That—

(1) except as provided by subsection (c), the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;

(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

(b) Conveyancing requirement; specific findings for nonexecution

The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

(c) Below market value conveyance of Cherokee Nation of Oklahoma homesites

The Secretary may execute instruments of conveyance for less than fair market value to effectuate the transfer of lands used as homesites held, on December 17, 1991, by the United States in trust for the Cherokee Nation of Oklahoma. Only the lands used as homesites, and described in the land consolidation plan of the Cherokee Nation of Oklahoma approved by the Secretary on February 6, 1987, shall be subject to this subsection.

(Pub. L. 97-459, title II, §204, Jan. 12, 1983, 96 Stat. 2517; Pub. L. 98-608, §1(1), Oct. 30, 1984, 98 Stat. 3171; Pub. L. 102-238, §3, Dec. 17, 1991, 105 Stat. 1908.)

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102-238, §3(1), substituted “(1) except as provided by subsection (c), the sale price” for “(1) the sale price”.

Subsec. (c). Pub. L. 102-238, §3(2), added subsec. (c).

1984—Subsec. (a). Pub. L. 98-608 amended subsec. (a) generally, substituting “: *Provided*, That—” for period at end and inserting five numbered pars., thereby correcting errors originally contained in this section as enacted by Pub. L. 97-459, the text of which had a portion of section 204 appearing in section 206 (classified to section 2205 of this title) as the result of inadvertent error in the execution of committee amendments (see House Report No. 97-908, Sept. 30, 1982) to the bill. Pub. L. 97-459 enacted subsec. (a) as ending with “tribal landholdings.”, and included portion of section 204 containing proviso and five numbered pars. within text of section 206.

Subsec. (b). Pub. L. 98-608 included subsec. (b) within this section and substituted a period for the dash after “tribal land consolidation plan”, thereby correcting errors originally contained in this section as enacted by Pub. L. 97-459, which, as the result of inadvertent error in the execution of committee amendments (see House Report No. 97-908, Sept. 30, 1982) to the bill, enacted subsec. (b) as part of section 206(b) of Pub. L. 97-459 and ended it with “tribal land consolidation plan—”.

§ 2204. Purchase of trust or restricted or controlled lands at no less than fair market value; requisite conditions

(a) Purchase of land

(1) In general

Subject to subsection (b), any Indian tribe may purchase, at not less than fair market value and with the consent of the owners of the interests, part or all of the interests in—

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

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

(2) Required consent

(A) In general

The Indian tribe may purchase all interests in a tract described in paragraph (1) with the consent of the owners of undivided interests equal to at least 50 percent of the undivided interest in the tract.

(B) Interest owned by tribe

Interests owned by an Indian tribe in a tract may be included in the computation of the percentage of ownership of the undivided interests in that tract for purposes of determining whether the consent requirement under subparagraph (A) has been met.

(b) Conditions applicable to purchase

Subsection (a) applies on the condition that—

(1) any Indian owning any undivided interest, and in actual use and possession of such tract for at least three years preceding the tribal initiative, may purchase such tract by matching the tribal offer;

(2) if at any time within five years following the date of acquisition of such land by an individual pursuant to this section, such property is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such

offer or petition to acquire such property by paying to the owner the fair market value as determined by the Secretary; and

(3) the approval of the Secretary shall be required for a land sale initiated under this section, except that such approval shall not be required with respect to a land sale transaction initiated by an Indian tribe that has in effect a land consolidation plan that has been approved by the Secretary under section 2203 of this title.

(c) Partition of highly fractionated Indian lands

(1) Applicability

This subsection shall be applicable only to parcels of land (including surface and subsurface interests, except with respect to a subsurface interest that has been severed from the surface interest, in which case this subsection shall apply only to the surface interest) which the Secretary has determined, pursuant to paragraph (2)(B),¹ to be parcels of highly fractionated Indian land.

(2) Requirements

Each partition action under this subsection shall be conducted by the Secretary in accordance with the following requirements:

(A) Application

Upon receipt of any payment or bond required under subparagraph (B), the Secretary shall commence a process for partitioning a parcel of land by sale in accordance with the provisions of this subsection upon receipt of an application by—

(i) the Indian tribe with jurisdiction over the subject land that owns an undivided interest in the parcel of land; or

(ii) any person owning an undivided interest in the parcel of land who is eligible to bid at the sale of the parcel pursuant to subclause (II), (III), or (IV) of subparagraph (I)(i);

provided that no such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(B) Costs of serving notice and publication

The costs of serving and publishing notice under subparagraph (F) shall be borne by the applicant. Upon receiving written notice from the Secretary, the applicant must pay to the Secretary an amount determined by the Secretary to be the estimated costs of such service of notice and publication, or furnish a sufficient bond for such estimated costs within the time stated in the notice, failing which, unless an extension is granted by the Secretary, the Secretary shall not be required to commence the partition process under subparagraph (A) and may deny the application. The Secretary shall have the discretion and authority in any case to waive either the payment or the bond (or any portion of such payment or bond) other-

¹ So in original. Probably should be paragraph “(2)(C).”.