

105TH CONGRESS  
1ST SESSION

# H. R. 2743

To reduce the fractionated ownership of Indian lands, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 24, 1997

Mr. YOUNG of Alaska (by request) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To reduce the fractionated ownership of Indian lands, and  
for other purposes.

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 Consoli-  
5       dation Amendment Act of 1997”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) In the 1800’s and early 1900’s, the United  
9       States sought to assimilate Indian people into the  
10      surrounding non-Indian culture by allotting tribal  
11      lands to individual tribal members.

1           (2) Many trust allotments were taken out of  
2           trust status and sold by their Indian owners.

3           (3) The trust periods for trust allotments have  
4           been extended indefinitely; however, because of the  
5           inheritance provisions in the original treaties or al-  
6           lotment Acts, the ownership of many of the allot-  
7           ments that have remained in trust status have be-  
8           come fractionated into hundreds or thousands of in-  
9           terests many of which represent less than 2 percent  
10          of the total interest in the allotment.

11          (4) Congress has authorized acquisition of lands  
12          held in trust for individual Indians and many of  
13          these lands have become and continue to be  
14          fractionated by subsequent inheritance.

15          (5) These fractional interests provide little or  
16          no return to their beneficial owners and cost the  
17          United States inordinate amounts in administrative  
18          costs.

19          (6) In 1983, Congress enacted the Indian Land  
20          Consolidation Act. Substantial numbers of 2 percent  
21          or less fractional interests have escheated to tribes  
22          pursuant to section 207 of the Indian Land Consoli-  
23          dation Act. However, the United States Supreme  
24          Court found the application of section 207 to the  
25          facts presented in *Babbitt v. Youpee* (117 S.Ct.

1       727) to be unconstitutional. Thus, in the absence of  
2       remedial legislation, the number of fractional inter-  
3       ests will continue to grow.

4           (7) The problem of fractionation was caused by  
5       Federal policy and required a Federal legislative so-  
6       lution.

7       **SEC. 3. DECLARATION OF POLICY.**

8       It is the policy of this Act to—

9           (1) prevent the further fractionation of trust  
10       lands;

11          (2) to consolidate fractionated interests and  
12       ownership of those interests in Indian trust lands  
13       into usable parcels;

14          (3) to vest beneficial title to such parcels in the  
15       tribes on whose reservations the lands are located;  
16       and

17          (4) to promote tribal self-sufficiency and self-  
18       determination.

19       **SEC. 4. AMENDMENTS TO THE INDIAN LAND CONSOLIDA-**  
20                           **TION ACT.**

21       The Indian Land Consolidation Act (25 U.S.C. 2201  
22       et seq.) is amended as follows:

23           (1) Section 202 is amended—

24                   (A) by striking paragraph (2) and insert-  
25       ing the following:

1           “(2) ‘Indian’ means a person who is a member  
2           of an Indian tribe or a person who is eligible to be-  
3           come a member of an Indian tribe at the time of the  
4           distribution of the assets of a decedent’s estate;”;

5           (B) by striking “and” at the end of para-  
6           graph (3);

7           (C) by striking the period at the end of  
8           paragraph (4) and inserting a semicolon; and

9           (D) by adding at the end the following:

10          “(5) ‘heirs of the first or second degree’ means  
11          parents, children, grandchildren, grandparents,  
12          brothers, and sisters of the decedent; and

13          “(6) ‘Acquisition Fund’ means the fund created  
14          pursuant to section 216.”.

15          (2) Section 203 is amended—

16               (A) by striking “section 5” and inserting  
17               “sections 5 and 7”; and

18               (B) by inserting “or the creation of res-  
19               ervations” after “land”.

20          (3) Section 205 is amended—

21               (A) by striking the colon before “*Provided*”  
22               and inserting “. Interests owned by a tribe in  
23               a tract may be included in the computation of  
24               the 50 per centum ownership requirement.  
25               Nothing”;

1 (B) by striking paragraph (3) and insert-  
2 ing the following:

3 “(3) if a tribe does not have a land consolida-  
4 tion plan approved pursuant to section 204, all pur-  
5 chases and sales initiated under this section shall be  
6 subject to approval by the Secretary.”.

7 (5) Section 206 is amended to read as follows:

8 **“SEC. 206. DESCENT AND DISTRIBUTION OF TRUST OR RE-**  
9 **STRICTED LANDS; TRIBAL ORDINANCE BAR-**  
10 **RING NONMEMBERS OF TRIBE FROM INHER-**  
11 **ITANCE BY DEVISE OR DESCENT.**

12 “(a) TRIBAL PROBATE CODES.—Notwithstanding  
13 any other provision of law, any tribe may adopt its own  
14 code of laws to govern descent and distribution of trust  
15 or restricted lands within that tribe’s reservation or other-  
16 wise subject to that tribe’s jurisdiction. Such codes may  
17 provide that, notwithstanding the provisions of section  
18 207, only members of the tribe shall be entitled to receive  
19 by devise or descent any interest in trust or restricted  
20 lands within that tribe’s reservation or otherwise subject  
21 to that tribe’s jurisdiction.

22 “(b) SECRETARIAL APPROVAL.—(1) A tribal code en-  
23 acted pursuant to subsection (a), or amendments to such  
24 codes, shall be subject to approval by the Secretary. The  
25 Secretary shall not approve any code that does not prevent

1 or substantially reduce the further fractionation of trust  
2 or restricted lands. Any code approved pursuant to this  
3 subsection, or an amendment to such a code, shall not be-  
4 come effective until the effective date of section 207. For  
5 codes or amendments to a code enacted after the effective  
6 date of section 207, the code or amendments shall not be  
7 effective until at least six months after approval by the  
8 Secretary of the code or amendments. All codes shall af-  
9 fect only the estates of decedents whose death occurred  
10 on or after the effective date of the code or the related  
11 amendments to the code.

12 “(2) Repeal of any tribal code approved pursuant to  
13 this subsection shall require the approval of the Secretary  
14 and shall not be effective until at least six months after  
15 such approval. The repeal of a tribal code shall affect only  
16 the estates of decedents whose death occurred on or after  
17 the effective date of the repeal.

18 “(c) PROBATE OF ESTATES IN TRIBAL COURT;  
19 UNITED STATES NOT AN INDISPENSABLE PARTY.—(1) A  
20 tribe with a probate code approved pursuant to subsection  
21 (b) of this section may assume the responsibility for pro-  
22 bating in tribal court the estates of decedents owning  
23 lands or interests in lands on the tribe’s reservation, or  
24 who own lands or interests in lands otherwise subject to  
25 the tribe’s jurisdiction. The United States shall not be an

1 indispensable party to the proceeding in any probate pro-  
 2 ceeding initiated by a tribe pursuant to this subsection.

3 “(2) A tribe that elects to probate estates in tribal  
 4 court under paragraph (1) shall promptly notify the agen-  
 5 cy of the Bureau of Indian Affairs that has jurisdiction  
 6 over the tribe’s lands of the final distribution of a dece-  
 7 dent’s interests in trust or restricted land.

8 “(3) If the Secretary determines that a tribe is not  
 9 providing timely notice of the distribution of estates or  
 10 that the Bureau of Indian Affairs’ ability to maintain ac-  
 11 curate financial and land records is being adversely af-  
 12 fected, the Secretary may, after 30 days written notice to  
 13 the tribe and after providing the tribe with an opportunity  
 14 to respond to the notice, reassume the duty of probating  
 15 estates involving interests in trust or restricted land.”.

16 (6) Section 207 is amended to read as follows:

17 **“SEC. 207. DESCENT AND DISTRIBUTION; ESCHEAT OF**  
 18 **FRACTIONAL INTERESTS.**

19 “(a) DESCENT AND DISTRIBUTION.—(1) Interests in  
 20 trust or restricted lands may descend by testate or intes-  
 21 tate succession only to Indians.

22 “(2) If a testator devises interests in the same parcel  
 23 of trust or restricted land to more than one person, in  
 24 the absence of express language in the devise to the con-

1 trary, the devise shall be presumed to create a joint ten-  
 2 ancy with right of survivorship;

3 “(3) If an estate passes by intestate succession, only  
 4 spouses and heirs of the first or second degree may inherit  
 5 interests in trust or restricted lands in that estate. All in-  
 6 terests in trust or restricted land passing by intestate suc-  
 7 cession shall create a joint tenancy with right of survivor-  
 8 ship in the heirs to the estate.

9 “(4) If a person who is prohibited by law from receiv-  
 10 ing an interest in trust or restricted lands is a surviving  
 11 spouse or child of a decedent—

12 “(A) any devise to such spouse or child shall be  
 13 presumed, unless a lesser estate is provided for in  
 14 the decedent’s will, to create a life estate, if such is  
 15 requested during the probate of the decedent’s estate  
 16 by the spouse or child or by the representative or the  
 17 spouse or child if the spouse or child is under a legal  
 18 disability; and

19 “(B) in the absence of a will, a life estate shall  
 20 be created for a spouse or child or a decedent, if  
 21 such is requested during the probate of the dece-  
 22 dent’s estate by the spouse or child or by the rep-  
 23 resentative or the spouse or child if the spouse or  
 24 child is under a legal disability;



1       “(5) If no individual is eligible to receive an interest  
2 in trust or restricted lands, the interest shall escheat to  
3 the tribe having jurisdiction over the trust or restricted  
4 lands, subject to any life estate that may be created pursu-  
5 ant to this subsection.

6       “(6) Upon the death of an individual holding an in-  
7 terest in trust or restricted lands which are located outside  
8 the boundaries of a reservation and which are not subject  
9 to the jurisdiction of any tribe, such interest shall de-  
10 scend—

11           “(A) testate or intestate succession in trust to  
12 the spouse or heirs of the first or second degree of  
13 the decedent; or

14           “(B) to any other devisees or heirs.

15       “(7) Upon the death of an individual holding an in-  
16 terest in restricted lands issued pursuant to the Act of  
17 May 17, 1906 (34 Stat. 197) or the Act of May 25, 1926  
18 (44 Stat. 629) that are not subject to the jurisdiction of  
19 any tribe, such interest shall descend—

20           “(A) in testate or intestate succession in re-  
21 stricted status to the spouse or heirs of the first or  
22 second degree of the decedent; or

23           “(B) to any other devisees or heirs.

24       “(b) ESCHEATABLE FRACTIONAL INTERESTS.—Not-  
25 withstanding the provisions of subsection (a), no undivided

1 interest which represents 2 per centum or less of the total  
 2 acreage in a tract of trust or restricted land shall pass  
 3 by intestacy but shall escheat to the tribe on whose res-  
 4 ervation the interest is located, or if the land is outside  
 5 of a reservation, to the recognized tribal government pos-  
 6 sessing jurisdiction over such land.

7 “(c) EFFECTIVE DATE.—The provisions of this sec-  
 8 tion shall become effective 2 years after the date of the  
 9 enactment of the Indian Land Consolidation Amendment  
 10 Act of 1997, and shall apply only to those estates of dece-  
 11 dents whose death occurred on or after such date.”.

12 (7) Section 208 is amended to read as follows:

13 **“SEC. 208. FULL FAITH AND CREDIT TO TRIBAL ACTIONS**  
 14 **UNDER TRIBAL ORDINANCES LIMITING DE-**  
 15 **SCENT AND DISTRIBUTION OF TRUST OR RE-**  
 16 **STRICTED OR CONTROLLED LANDS.**

17 “In carrying out the responsibility to determine the  
 18 heirs of trust and restricted lands of a tribe pursuant to  
 19 the first section of the Act of June 25, 1910 (25 U.S.C.  
 20 372), the Secretary shall apply the rules of devise and de-  
 21 scent contained in the tribal probate code approved pursu-  
 22 ant to section 206, and shall give full faith and credit to  
 23 any probates conducted by a tribal court pursuant to an  
 24 approved tribal probate code.”.

25 (8) Section 209 is amended to read as follows:

1 **“SEC. 209. CONVEYANCE AUTHORITY UPON SALE OR EX-**  
2 **CHANGE OF TRIBAL LANDS; REMOVAL OF**  
3 **TRUST STATUS OF INDIVIDUALLY OWNED**  
4 **LANDS.**

5 “The Secretary shall have the authority to issue  
6 deeds, patents, disclaimers, or such other instruments of  
7 conveyance or transfer as may be needed to effectuate or  
8 perfect a sale, partition, exchange, or transfer of tribal  
9 lands and individual trust or restricted lands or interests  
10 therein which are made pursuant to the terms of this Act  
11 or of the first section of the Act of June 25, 1910 (25  
12 U.S.C. 372), the Act of May 18, 1916 (25 U.S.C. 378),  
13 section 7 of the Act of May 27, 1902 (25 U.S.C. 379),  
14 the Act of May 29, 1908 (25 U.S.C. 404), or the Act of  
15 March 1, 1907 (25 U.S.C. 405), including the authority  
16 to eliminate the trust status, or remove restrictions on  
17 alienation, of individually held lands or interests therein  
18 as authorized by this Act or the first section of the Act  
19 of June 25, 1910 (25 U.S.C. 372), the Act of May 18,  
20 1916 (25 U.S.C. 378), section 7 of the Act of May 27,  
21 1902 (25 U.S.C. 379), the Act of May 29, 1908 (25  
22 U.S.C. 404), or the Act of March 1, 1907 (25 U.S.C.  
23 405), and when requested by the individual Indian  
24 owners.”.

25 (9) The Indian Land Consolidation Act is  
26 amended by adding after section 212 the following:

1 **“SEC. 213. ACQUISITION OF FRACTIONAL INTERESTS.**

2 “(a) The Secretary is authorized to acquire, with the  
3 consent of its owner and at fair market value, any frac-  
4 tional interest in trust or restricted lands. The Secretary  
5 shall give priority to the acquisition of fractional interests  
6 representing 2 per centum or less of a parcel of trust or  
7 restricted land. The Secretary shall hold in trust for the  
8 tribe that has jurisdiction over the fractional interest the  
9 title of all interests acquired pursuant to this section.

10 “(b) Any tribe with a land consolidation plan ap-  
11 proved by the Secretary pursuant to section 204 may  
12 apply to the Secretary to enter into an agreement with  
13 the Secretary to implement the program to acquire frac-  
14 tional interests under subsection (a). In addition to the  
15 requirements set forth in sections 204 and 205, tribes ap-  
16 plying for Federal funding of tribal land consolidation  
17 plans shall include in their applications the following:

18 “(1) A description of the tribe’s dispute resolu-  
19 tion mechanisms and an assurance that individuals  
20 with interests in trust or restricted land will have a  
21 forum to challenge any value determinations made  
22 by the tribe in implementing its land consolidation  
23 plan.

24 “(2) A financial statement indicating whether  
25 the tribe has any resources to contribute to the fi-

1       nancing of the fractional interest acquisition pro-  
2       gram and the amount of that contribution.

3           “(3) A statement that none of the Federal  
4       money received to implement the fractional interest  
5       acquisition program will be used to finance the ac-  
6       quisition of land by individual tribal members.

7           “(4) A commitment to pay any rents or profits  
8       from, or the proceeds of sales of fractional interests  
9       acquired pursuant to subsection (a), to the Secretary  
10      in accordance with section 214.

11      “(c) Any agreement negotiated pursuant to this sec-  
12      tion shall not be subject to Public Law 93–638, or any  
13      regulations promulgated thereunder, but shall be subject  
14      solely to the provisions of this Act and the terms and con-  
15      ditions of such agreement. All such agreements shall pro-  
16      vide that if funds made available to a tribe for the acquisi-  
17      tion of fractional interests remain unexpended for 2 years,  
18      the funds shall revert to the Acquisition Fund.

19      **“SEC. 214. ADMINISTRATION OF ACQUIRED FRACTIONAL**  
20                   **INTERESTS; DISPOSITION OF PROCEEDS.**

21      “(a) A tribe receiving a fractional interest pursuant  
22      to sections 207 and 213 may, as a tenant in common with  
23      the other owners of the trust or restricted land, lease the  
24      interest, sell the resources, consent to the granting of

1 rights-of-way, or engage in any other transaction affecting  
2 the trust or restricted land authorized by law.

3 “(b) Until the purchase price paid by the Secretary  
4 pursuant to this Act for an interest in trust or restricted  
5 land has been recovered, any lease, resource sale contract,  
6 right-of-way, or other transaction affecting the interest  
7 shall contain a clause providing that all revenue derived  
8 from the interest shall be paid to the Secretary. The Sec-  
9 retary shall deposit all such revenue in the Acquisition  
10 Fund.

11 “(c) Notwithstanding section 476 of title 25, United  
12 States Code, or any other provision of law, so long as a  
13 tribe is a tenant in common with individual Indian land-  
14 owners on land acquired pursuant to sections 207 and  
15 213, the tribe shall enter into any transaction con-  
16 templated by this section if a majority of the remaining  
17 landowners consent to the transaction. If the tribe does  
18 not consent, the Secretary shall consent to the transaction  
19 on behalf of the tribe. For leases of allotted land that are  
20 authorized to be granted by the Secretary, the tribe shall  
21 be treated as if it were an individual Indian landowner.

22 **“SEC. 215. ESTABLISHING FAIR MARKET VALUE.**

23 “For the purposes of this Act, the Secretary may de-  
24 velop a reservation-wide system for establishing the fair  
25 market value of various types of lands and improvements

1 which may govern the amounts offered for the purchase  
2 of interests in trust or restricted lands pursuant to section  
3 213.

4 **“SEC. 216. ACQUISITION FUND.**

5       “The Secretary shall establish an Acquisition Fund  
6 to carry out this Act purposes of section 213 and to collect  
7 all revenues received from the lease, permit, or sale of re-  
8 sources from interests in trust or restricted lands trans-  
9 ferred to tribes by the Secretary pursuant to section 213.  
10 Until the purchase price of an interest acquired pursuant  
11 to section 213 has been recovered, all proceeds from  
12 leases, permits, or resource sales derived from the interest  
13 shall be deposited in the Acquisition Fund and shall, as  
14 specified in advance in appropriations Acts, be available  
15 for the purpose of acquiring additional fractional interests.

16 **“SEC. 217. DETERMINATION OF RESERVATION BOUND-**  
17 **ARIES AND TRIBAL JURISDICTION.**

18       “Determinations of whether or not a parcel of land  
19 within an Indian reservation is otherwise subject to a  
20 tribe’s jurisdiction shall be made by the Secretary. Review  
21 of these determinations shall be in the United States dis-  
22 trict court where the land is located.

23 **“SEC. 218. REPORTS TO CONGRESS.**

24       “Three years after the date of the enactment of the  
25 Indian Land Consolidation Amendments Act of 1997, and

1 annually thereafter, the Secretary shall file a report indi-  
2 cating the number of fractional interests acquired and the  
3 impact of the reduction in the number of fractional inter-  
4 ests on the Bureau of Indian Affairs' financial and realty  
5 recordkeeping systems. The Secretary, after consultation  
6 with the tribes, shall recommend any amendments or addi-  
7 tional legislation necessary to make meaningful reductions  
8 in the number of fractional interests.

9 **“SEC. 219. APPROVAL OF LEASES, RIGHTS-OF-WAY, AND**  
10 **SALES OF NATURAL RESOURCES.**

11 “The Secretary may approve any lease, right-of-way,  
12 sale of natural resources, or any other transaction affect-  
13 ing individually owned trust or restricted lands that re-  
14 quires approval by the Secretary, if the owners of a major-  
15 ity interest in the trust or restricted lands consent to the  
16 transaction and the Secretary determines that the trans-  
17 action is in the best interest of the Indian owners. Upon  
18 such approval, the transaction shall be binding upon the  
19 owners of the minority interests in the trust or restricted  
20 land and all other parties to the transaction to the same  
21 extent as if all of the Indian owners had consented to the  
22 transaction.



1   **“SEC. 220. REAL ESTATE TRANSACTIONS INVOLVING**  
2                   **NONTRUST LANDS.**

3           “Notwithstanding any other provision of law, any  
4 tribe may, on the same basis as any other person, buy,  
5 sell, mortgage, or otherwise acquire or dispose of lands  
6 or interests in land acquired after the effective date of the  
7 Indian Land Consolidation Amendments Act of 1997, and  
8 which are not held in trust or subject to a preexisting Fed-  
9 eral restriction on alienation imposed by the United  
10 States, without the approval of the Congress or of the Sec-  
11 retary and such disposition shall create no liability on the  
12 part of the United States.”.

13   **SEC. 4. NOTICE.**

14           Not later than 180 days after the enactment of this  
15 Act, the Secretary shall, to the extent practicable, notify  
16 tribes and individual landowners of the provisions of this  
17 Act. Notice pursuant to this section shall list estate plan-  
18 ning options available to holders of trust or restricted  
19 lands.

