

Public Law 98-608
98th Congress

Joint Resolution

To make technical corrections in the Act of January 12, 1983 (Public Law 97-459).

Oct. 30, 1984

[H.J. Res. 158]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of January 12, 1983 (96 Stat. 2515; Public Law 97-459), is hereby amended as follows:

Indians.
Public lands.

(1) At the end of section 204 change the period to a colon and insert the following: "*Provided, That—*

25 USC 2203.

"(1) 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.

Mines and
mining.

"(b) 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."

(2) Section 205 is amended to read as follows:

25 USC 2204.

"SEC. 205. Any Indian tribe may purchase at no less than the fair market value part or all of the interests in any tract of trust or restricted land within that tribe's reservation or otherwise subject to that tribe's jurisdiction with the consent of the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 per centum of the undivided interests in such tract: *Provided, That—*

"(1) any Indian owning any undivided interest, and in actual use and possession of such tract for at least three years preced-

ing 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;

"(3) all purchases and sales initiated under this section shall be subject to approval by the Secretary."

(3) Section 206 is amended to read as follows:

"SEC. 206. (a) Notwithstanding any other provision of law, any Indian tribe, subject to approval by the Secretary, may adopt its own code of laws to govern descent and distribution of trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction, and may provide that nonmembers of the tribe or non-Indians shall not be entitled to receive by devise or descent any interest or trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction: *Provided*, That in the event a tribe takes such action—

"(1) if an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of such restriction on eligibility for inheritance and the remainder shall vest in the Indians or tribal members who would have been heirs in the absence of a qualified person taking a life estate;

"(2) if an intestate Indian decedent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the tribe, subject to any non-Indian or nonmember spouse and/or children's rights as described in paragraph (1) of this section;

"(3) if an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of a tribal ordinance enacted pursuant to this section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the tribe acquires such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death: *Provided*, That any non-Indian or nonmember spouse and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests. Any ineligible devisee shall also have the right to renounce his or her devise in favor of a person or persons who are eligible to inherit.

"(b) The right to receive a life estate under the provisions of this section shall be limited to—

"(1) a spouse and/or children who, if they had been eligible, would have inherited an ownership interest of 10 per centum or more in the tract of land; or

"(2) a spouse and/or children who occupied the tract as a home at the time of the decedent's death."

(4) Section 207 is amended to read as follows:

Gifts and
property.
25 USC 2205.

"SEC. 207. (a) No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and is incapable of earning \$100 in any one of the five years from the date of decedent's death. Where the fractional interest has earned to its owner less than \$100 in any one of the five years before the decedent's death, there shall be a rebuttable presumption that such interest is incapable of earning \$100 in any one of the five years following the death of the decedent.

Gifts and
property.

"(b) Nothing in this section shall prohibit the devise of such an escheatable fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land.

"(c) Notwithstanding the provisions of subsection (a), any Indian tribe may, subject to the approval of the Secretary, adopt its own code of laws to govern the disposition of interests that are escheatable under this section, and such codes or laws shall take precedence over the escheat provisions of subsection (a), provided, the Secretary shall not approve any code or law that fails to accomplish the purpose of preventing further descent or fractionation of such escheatable interests."

(5) At the conclusion of the Act add the following new section:

"SEC. 212. Nothing in this Act shall be construed as vesting the governing body of an Indian tribe with any authority which is not authorized by the constitution and by-laws or other organizational document of such tribe."

25 USC 2211.

SEC. 2. The Act of March 29, 1956 (c. 107, 70 Stat. 62; 25 U.S.C. 483a) is amended by inserting immediately after the enacting clause "(a)" and by adding at the conclusion of the Act a new subsection (b) as follows:

"(b) In the event such land is acquired by an Indian or an Indian tribe, such land shall not be removed from trust or restricted status except upon application to the Secretary under existing law."

Approved October 30, 1984.

LEGISLATIVE HISTORY—H.J. Res. 158:

HOUSE REPORT No. 98-49 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 98-632 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

Vol. 129 (1983): Apr. 19, 20, considered and passed House.

Vol. 130 (1984): Oct. 3, considered and passed Senate, amended.

Oct. 4, House concurred in Senate amendment.