

INDIAN HEIRSHIP LAND SURVEY

MEMORANDUM OF THE
CHAIRMAN

OF THE
SUBCOMMITTEE ON INDIAN AFFAIRS

TO THE MEMBERS OF THE
COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE



MAY 1, 1961

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11 or restricted interests in the land, unless the Secretary finds

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II

INDIAN HEIRSHIP LAND SURVEY

For many years those of us directly involved in the legislative and administrative aspects of American Indian affairs have been aware of the so-called heirship land problem on many reservations. From time to time, individual tribes have come before the Committee asking that something be done to alleviate the fractionated ownership of individual Indian allotted lands.

LETTER OF TRANSMITTAL

To the Committee on Interior and Insular Affairs:

During the 86th Congress the then chairman of the committee, Senator James E. Murray, of Montana, instructed the staff of the committee to undertake a study of the heirship land problem on various Indian reservations. The study, entitled "Indian Heirship Land Survey of the 86th Congress, 1st Session," parts 1 and 2, has been printed and widely distributed.

Based on the findings of this heirship study, I have had the staff prepare legislation to alleviate this serious and longstanding problem. On March 21, 1961, I introduced in the Senate S. 1392, a bill relating to the Indian heirship land problem. There follow excerpts from the statement I made on the floor at the time this measure was presented to the Senate, together with some explanatory material of the sections of the bill.

FRANK CHURCH,
Chairman, Subcommittee on Indian Affairs.

III

Simultaneously with the Senate committee study of heirship, the House committee has also been attacking the same subject but in a different way. Early in the 86th Congress the House Committee on Interior and Insular Affairs instructed Dr. J. L. Taylor of the committee staff to obtain the assistance of the Library of Congress consultants in Indian affairs, Mr. Stephen A. Langone and Dr. William H. Gilbert, to make a comprehensive study of the heirship problem and to prepare a thorough analysis of their findings.

In anticipation of the formulation of legislation on the subject, the House committee sought to determine the opinions of the Indian heirs who are directly concerned. It sought for answers to questions regarding individual experiences with heirship land, their particular problems with their land, what they think should be done about this matter and why. Since hearings would be physically impossible over so wide an area as the distribution of the heirs was extended, it was decided that all known heirs would be contacted by means of a questionnaire through the mail. House Committee Print No. 27, volumes I and II, issued December 31, 1960, contains the responses of the

INDIAN HEIRSHIP LAND SURVEY

For many years those of us directly involved in the legislative and administrative aspects of American Indian affairs have been aware of the so-called heirship land problem on many reservations. From time to time, individual tribes have come before the Committee asking that something be done to alleviate the fractionated ownership of individual Indian allotted lands.

Two years ago Senator James E. Murray, of Montana, then chairman of the Committee on Interior and Insular Affairs, instructed Mr. James H. Gamble of the committee staff to engage the assistance of Dr. William H. Gilbert and Mr. Stephen A. Langone, consultants in Indian affairs of the Library of Congress, to undertake a study of the Indian heirship problem.

It was decided that a series of questionnaires should be sent out to the various central office and field officials of the Government and officials of the Indian tribes asking for information and opinions relating to the issue of heirship lands. The questions were directed to the Central Office of the Indian Bureau, the Area Offices of the Indian Bureau, the agencies of the Indian Bureau, to the Solicitor's office of the Interior Department, to the field examiners of inheritance, and to the various tribal councils.

The returns from these questionnaires were compiled into a volume of materials which have been issued as part I of the "Indian Heirship Land Survey." In part II of the "Indian Heirship Land Survey" there is presented an analysis by the committee staff of the materials presented in part I, together with an index of the two parts. These reports have been recently made available as a result of 2 years of diligent labor on the part of the committee staff.

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Indians to the questionnaire. It gives a complete picture of the range of opinions of Indian owners of heirship land.

The congressional committee staffs have compiled for us the most complete and up-to-date information on what the heirship problem is and where it exists. We now have adequate background material on which to frame a legislative solution to the multiple ownership of allotted land. Therefore, I instructed the staff to prepare a bill that would effectively and realistically aid in the alleviation of this long-standing and complex problem.

I wish to make it very clear that this proposal is a vehicle for the purpose of exploring further the viewpoints and wishes of the people most affected by this problem. Hearings on the bill should be held in the near future, and I am sure we will receive many valuable suggestions and recommendations which will aid us in our effort to enact effective heirship legislation.

This proposal is quite different from others which have come before the Congress in recent years. It is the result of a prolonged and detailed investigation of the problem by the staffs of the Senate and House Committees on Interior and Insular Affairs. It was directed not only to the Government officials involved and the tribal officials but also to the Indians themselves, the owners of heirship land whose interests are most immediately involved in any legislative action on this subject.

There follows, for the information of committee members, the text of S. 1392, a bill relating to the Indian heirship land problem, and a section-by-section analysis of the bill prepared by the staff.

[S. 1392, 87th Cong., 1st sess.]

A BILL Relating to the Indian heirship land problem

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

SECTION 1. That upon the request of any owner of an Indian interest in any tract of land in which any undivided interest is held by the United States in trust for an individual Indian or an Indian tribe, or in which any undivided interest is held by an individual Indian or an Indian tribe subject to a restriction against alienation imposed by the United States, the Secretary of the Interior is authorized and directed to partition or to sell all undivided Indian trust or restricted interests in the land, unless the Secretary finds that such a partition or sale would not be in the best interests of the Indian owners and reports annually to the Congress the basis for his finding in each case. Any interest in oil, gas, or other minerals that is reserved to an Indian owner in any sale made pursuant to this section shall be reserved in a nontrust and unrestricted status, unless the Secretary makes the determination referred to in subsection 10(b). The Secretary is authorized to execute all appropriate title documents for sales made pursuant to this section, and to distribute the proceeds of such sales in accordance with the regulations applicable to individual Indian moneys. No sale under the provisions of this section shall include any mineral estate that has been reserved to any Indian tribe by other provisions of law.

SEC. 2. The Secretary may, when he deems it in the best interests of the Indian owners, obtain a power of attorney from the owner of a non-Indian or unrestricted interest in the land to be sold authorizing the Secretary to sell and convey such interest.

SEC. 3. For the purposes of this Act, the Secretary may represent any Indian owner who is a minor, or who is non compos mentis, and after giving reasonable notice by publication of the proposed sale, he may represent an Indian owner who cannot be located.

SEC. 4. All sales of lands authorized by section 1 of this Act shall be by competitive bid, except that a sale may be made to one of the owners of an interest in the land, or to the tribe within whose reservation the land is located, at not less than the appraised value of the land if none of the owners after reasonable notice objects.

If a timely objection is made, the sale shall be by sealed, competitive bid, subject, upon request made prior to the solicitation of bids, to the right of the tribe or any of the Indian owners to ask immediately after bids are opened that the land be sold at auction, in which event auction bidding shall be limited to persons who submitted sealed bids in amounts not less than 75 per centum of the appraised value of the land, the Indian owners, and the tribe. The highest sealed bid shall be considered the opening auction bid. No sale shall be made unless the price is substantially equal to the appraised value. Title to any land purchased by a tribe may be taken in trust for the tribe if it is located within the boundaries of the reservation. Title to any land purchased by an individual Indian, or by a tribe if the land is outside the boundaries of the reservation, shall be taken in the name of the purchaser without any restriction on alienation, control, or use, unless the Secretary makes the determination referred to in subsection 10(b) with respect to an individual Indian.

SEC. 5. (a) In order to assist tribes that wish to purchase land offered for sale under the provisions of this Act, the Secretary of the Interior is authorized to make a loan to any tribe under the conditions stated below, provided the tribe does not have funds available in an amount that is adequate to make the purchase and is unable to obtain a loan from other sources. Such loan shall be made from the revolving funds referred to in section 9 of this Act.

(b) The amount of the loan shall not exceed the appraised value of the land plus the value of any other property the tribe may mortgage or pledge as security for the loan.

(c) The tribe shall give to the United States a mortgage on the land purchased with the loan, and on any other tribal property which the Secretary deems necessary to secure the loan adequately.

(d) The loan shall be for a term of not to exceed twenty-five years, and shall bear interest at a composite rate consisting of (1) a rate equal to the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the month in which the loan is made, as such rate is determined by the Secretary of the Treasury, plus (2) a rate, to cover losses and administrative expenses, determined by the Secretary of the Interior, which rate shall be not less than one-half of 1 per centum and not more than 1 per centum. The loan need not require repayment in equal installments, but it shall require repayment according to a schedule that will fully amortize the loan within the time specified. In the event of a default in the repayment of the loan, the Secretary of the Interior shall take such action as he deems necessary to protect the interests of the United States. If during the period of repayment the tribe is awarded a money judgment against the United States in excess of the unpaid balance of the loan, the entire unpaid balance shall be collected from the appropriation to satisfy the judgment.

(e) Before a loan is made the tribe shall submit for approval of the Secretary of the Interior a master plan for the use of all lands to be purchased. Any tribe preparing a plan may call upon the Secretary for technical assistance, and the Secretary shall render such assistance as may be necessary. Such plan shall include provision for consolidation of holdings of the tribe, or acquisition of sufficient lands in conjunction with those held to permit reasonable economic utilization of the land and repayment of the loan. The Secretary shall not approve a tribal plan unless it is agreed to by a majority of adult tribal members, both on and off the reservation, who vote in a referendum for that purpose. Such plan may be revised from time to time with the approval of the Secretary, but without the need for a referendum.

(f) The cost of managing any land purchased by a tribe pursuant to this Act shall be borne by the tribe and not by the United States.

SEC. 6. Any tribe that adopts, with the approval of the Secretary of the Interior, a plan pursuant to subsection 5(e) of this Act, or any other plan that does not involve a loan from the United States but which provides for the consolidation, management, use, or disposition of tribal land, is hereby authorized, with the approval of the Secretary of the Interior, to sell any tribal land or other property in furtherance of such plan.

SEC. 7. The Secretary of the Interior shall approve no plan pursuant to this Act that contains any provision that will prevent or delay a termination of Federal trust responsibilities with respect to the land during the term of the plan.

SEC. 8. Nothing in this Act shall repeal any authority to sell trust or restricted that is conferred by any other provisions of law.

SEC. 9. (a) All funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936

(49 Stat. 1968), and the Act of April 19, 1950 (64 Stat. 44), as amended and supplemented, including sums received in settlement of debts of livestock pursuant to the Act of May 24, 1950 (64 Stat. 190), sums collected in repayment of loans heretofore or hereafter made, and sums collected as interest or other charges on loans made, shall hereafter be available for loans to organizations of Indians, Eskimos, and Aleuts (hereinafter referred to as Indians), having a form of organization that is satisfactory to the Secretary, and to individual Indians of one-quarter degree or more of Indian blood who are not members of or eligible for membership in an organization that is making loans to its members, for any purpose that will promote the economic development of such organizations and their members, or the individual Indian borrowers.

(b) The appropriation authorization in section 10 of the Act of June 18, 1934 (48 Stat. 986), is hereby amended by increasing it from \$10,000,000 to \$50,000,000.

SEC. 10. (a) In order to prevent the problem of multiple ownership of undivided interests in Indian trust and restricted land from growing as rapidly as it has grown in the past, and at the same time protect the land ownership interests of Indians who need special protection, the provisions of this section shall apply notwithstanding any other provision of law.

(b) In any case of transfer of title to Indian trust or restricted land or an interest therein by inheritance or devise, the title shall pass by operation of law in a nontrust and unrestricted status unless the Secretary of the Interior determines before the close of the probate proceeding that the Indian heir or devisee lacks ability, knowledge, experience, and judgment to manage his business affairs with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing his property or the benefits thereof.

(c) The Secretary of the Interior shall not approve any acquisition by an Indian of title to land or an interest in land in a trust or restricted status unless he makes the determination referred to in subsection (b) of this section.

(d) The Secretary of the Interior shall not extend by a general order applicable to a class of Indians a trust period that would otherwise expire on or after January 1, 1964, and a trust period that expires prior to such date shall not be extended beyond that date by a general order. After January 1, 1964, a trust period shall be extended only by an order applicable to specified individual Indians and only on the basis of the determination referred to in subsection (b) of this section. Any extension of a trust period on an individual basis after January 1, 1964, may be for such term of years as the Secretary of the Interior deems appropriate, for the life of the individual, or until the individual reaches the age of 21, subject to the right to terminate the trust in accordance with the provisions of this Act or any amendment thereof or supplement thereto.

(e) Any trust or restrictions on the title of an individual Indian that do not extend for a stated number of years or for an ascertainable term shall terminate on January 1, 1964, unless extended by the Secretary of the Interior in accordance with subsection (d) of this section.

(f) The Secretary of the Interior shall review, as rapidly as possible, each trust or restriction on title to land or an interest in land that extends beyond January 1, 1964, and he shall terminate the trust or restriction on title unless he makes the determination referred to in subsection (b) of this section. Thereafter, the Secretary of the Interior shall continue to make such reviews in order to keep his determinations current.

(g) If the Secretary of the Interior terminates the trust or the restrictions on title to land or an interest in land owned by an Indian (and for this purpose a failure to extend a trust period shall not be regarded as a termination), the Indian may apply to the United States district court for the district in which the land is located for an order setting aside the Secretary's action, and the court shall have jurisdiction to issue such order if, in its judgment, the Indian does not meet the standard referred to in subsection (b) of this section.

(h) The Secretary of the Interior is authorized to issue such orders, documents, or evidences of title as he may deem appropriate to carry out the provisions of this section.

SEC. 11. This Act shall become effective six months after the date of enactment. During this interim period, the Secretary of the Interior shall notify each Indian tribe of the rights afforded by this Act in order that the tribe may make its plan for consolidating Indian holdings. Upon the conclusion of each Indian probate proceeding after the date of this Act, the Secretary shall also notify each Indian heir of the rights afforded by this Act.

SECTION-BY-SECTION ANALYSIS OF S. 1392

This particular bill is designed to provide an effective program to assist individual Indians and tribes in alleviating the heirship land problem and to prevent other lands from entering this status. It is difficult to arrive at the necessary balance needed between the indiscriminate disposal by Indians of their land as opposed to an effective solution to this problem. Such legislation must provide for partitionment of Indian interests if feasible, an opportunity for the heir to buy out other interests, an opportunity for the tribes to purchase the more important heirship tracts needed to strengthen their economy, and a realistic approach to the problem that will result in the more efficient and less costly administration of trust property. The legislation must also provide the Secretary of the Interior with sufficient authority to solve the problem and yet leave enough discretion on his part to protect the best interests of Indian owners in each case. This bill is based on thorough congressional studies of the problem through contact of Government officials directly concerned, the heirs themselves, and the tribes.

SECTION I

Provision is made for a single heir to bring about a partition or sale of an heirship tract. An examination of the various acts of Congress passed in recent years having to do with heirship land indicated that the most effective method in solving the heirship problem is that requiring only one heir to bring the action. The specific legislation referred to is the Tulalip (70 Stat. 290). That legislation would be even more effective if the Indians did not have to pay necessary court costs of such actions. This bill authorizes a single heir to bring an action without court costs to hamper him in these proceedings. The desire of the Indians themselves for such legislation is evident when we consider that 55 percent of the heirs answering a congressional questionnaire wanted all their heirship lands sold and another 13 percent wanted to sell some. One important point that was established in both congressional studies concerns the heirs living on heirship lands in which they own an interest. In many cases these individuals may not be financially able to move from the land should it be sold. Therefore, this bill provides that if partitionment is not feasible the Secretary may withhold approval of sales in cases where it would not be in the best interests of such Indian owners.

The bill is also tailored to meet the problem of mineral rights. Should an heir decide to sell the land and retain the mineral rights in trust, the heirship problem would continue. The Federal Government's responsibility for probating estates, posting interests, disbursing income, etc., would remain and the heirship problem with it. At the same time it is recognized that if the Indian does want to retain his mineral rights he should certainly have that opportunity. The studies of both the Senate and House Interior Committees have recognized this problem and section 1 of the bill was therefore drafted in such a way that this potential mineral heirship problem would not arise and yet the Indian is given the option of retaining the mineral interest.

One of the most important factors that must be kept in mind concerning this section is that it provides a device for the individual Indian and the tribe to sell scattered interests and buy one consolidated unit that he or they can use for either residential or commercial purposes.

SECTION II

The Secretary of the Interior is given the authority to sell a non-Indian interest (with power of attorney) in heirship lands. Both congressional studies have noted this problem since there are non-Indians, Mexican Indians, and Canadian Indians owning interests in heirship lands. A survey of their (alien Indians and non-Indian) opinion has been made and the majority want to sell their heirship interests and would therefore utilize this particular method. The Department itself in a report on H.R. 1150 (86th Cong.) recognized this problem also. This particular section of the bill is designed to provide the opportunity for these people to sell their land and this in turn would be beneficial to those American Indians holding interests in the same tract.

SECTION III

One of the greatest problems in the field of heirship land is that Indian owners are many times impossible to locate and as a result the land may lie fallow. Another problem is that the cost of guardianship for minors would in many cases exceed the income from the estate. Section three of this bill authorizes the Secretary of the Interior to represent the non compos mentis, minors, and heirs who cannot be located.

To illustrate how widespread this problem is, the House Interior Committee attempted to contact heirs to survey their opinions on the subject. Many of the names on the mailing lists of heirs supplied by the Bureau of Indian Affairs had notations stating that addresses were not known. Of the 52,000 with addresses to whom the questionnaire was mailed, over 10 percent could not be delivered.

SECTION IV

Special preference is given to heirs and the tribe in purchase of heirship lands offered for sale. Many heirs expressed a desire to sell their interests either to another heir or the tribe, and others expressed a desire to purchase the other interest. In addition to the Senate and House studies calling attention to this situation, it was recognized in a report of the Interior Department to the Senate Interior Committee stating in part that—

Each of the tenants in common should be given a preferential right to buy the land that is to be sold and thus retain it in Indian ownership—and that—

If none of the tenants in common wants to buy the land, the tribe should be given right to buy the land either by negotiation at the appraised value, or by meeting the high competitive bids, or by participating in an auction.

This bill, then, allows the individual or the tribe to purchase such lands with the consent of the other owners. There is need for a careful balance here between the preference rights of the purchaser and the

right of the other heirs to a fair price for their interest. Therefore, the individual owners also have a right to object to this special preference if they feel it is not a fair price. The procedure for sealed bids and then an auction is a protective device for the heirs and the tribe, since some tribes do own interests in heirship tracts and they are given the right to protect such interests.

Any lands purchased by a tribe may be taken in trust if they are within reservation boundaries. Heirship lands purchased by a tribe or an heir that are outside of the reservation would not be taken in trust, except in the case of an individual Indian in need of continued supervision.

SECTION V

Long-term loans are authorized to assist tribes not having adequate funds of their own to purchase needed heirship lands and to consolidate present holdings into more economic areas. This section is intended to implement the opportunity for tribes who have expressed interest in doing so to purchase needed heirship lands and to provide the Secretary of the Interior with authority to see that such programs are economically feasible for the tribe concerned. Loans would be made from the revolving credit loan fund. In order to assure that any plan involving the use of loans has the support of the Indians, the bill provides that the plan must be agreed to by a majority of adult tribal members voting in a referendum. This process would assure that any plan presented to the Secretary of the Interior would have been thoroughly discussed by the tribal members and they in turn would have an adequate understanding of the program and would have had an opportunity to express their views.

SECTION VI

Tribes are authorized to sell any tribal land to further their land consolidation programs. This particular section (6) is intended to assist any tribe that adopts an approved plan to have more flexibility in consolidating its holdings and purchasing needed heirship lands. A typical land consolidation program might very well provide for the sale of inferior land or land that cannot be effectively utilized in order to purchase other more desirable heirship land.

SECTION VII

In an effort to avoid any programs that might tend to confuse any termination activities, no plan can be approved that will prevent or delay such actions.

SECTION VIII

All other authorities through which this problem can be solved or alleviated are not affected by this bill.

SECTION IX

All funds presently authorized for loans to Indians would be consolidated into one revolving fund. This is in keeping with a recommendation of the Senate Appropriations Committee. An additional

\$40 million is authorized for loans, making a total of more than \$50 million in authorizations for this purpose and other requirements.

SECTION X

The intent of this section is to provide the Secretary of the Interior with authority to determine whether an individual Indian is capable of controlling his land and, if so, to give him a fee title to it. Many Indians have informed the Congress that they consider themselves fully capable of doing so. In the past there has been an extension of the trust period over land without any consideration given to whether the individual wants it or if continued trusteeship is needed. This has been one of the prime factors in compounding the heirship problem. There is, as brought out in both the Senate and House studies, a potential 6 million acres of land that will become heirship unless some action is taken, and as the Comptroller General stated in his report to the Congress:

All allotted lands will fall eventually into heirship status unless the land is removed from trust status before the death of the allottee.

The Comptroller further recommended that—

* * * the Congress consider legislation which would—without prejudicing any existing exemption from taxation constituting a vested property right—authorize the Secretary of the Interior to issue patents in fee, certificates of competency, or orders removing restrictions, whichever is appropriate, to all Indians holding restricted lands who have been determined by the Secretary to be competent, without requiring the application or authorization of the Indian, where such authority is not granted under existing legislation.

This section incorporates the findings of Senate, House, and Comptroller's studies on the subject by providing the Secretary with authority to take such actions and yet giving the Indian an opportunity to protect his interest.

SECTION XI

A period of delay is provided during which time the Secretary can notify the tribes and they can plan their programs. Provision is also made for notifying heirs of their rights under this legislation. This period can also be utilized by the Department to formulate necessary regulations, etc., to implement the program.



87TH CONGRESS
1ST SESSION

S. 1392

IN THE SENATE OF THE UNITED STATES

MARCH 21, 1961

Mr. CHURCH introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

Relating to the Indian heirship land problem.

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. That upon the request of any owner of an
4 Indian interest in any tract of land in which any undivided
5 interest is held by the United States in trust for an individ-
6 ual Indian or an Indian tribe, or in which any undivided
7 interest is held by an individual Indian or an Indian tribe
8 subject to a restriction against alienation imposed by the
9 United States, the Secretary of the Interior is authorized
10 and directed to partition or to sell all undivided Indian trust
11 or restricted interests in the land, unless the Secretary finds

1 that such a partition or sale would not be in the best interests
 2 of the Indian owners and reports annually to the Congress
 3 the basis for his finding in each case. Any interest in oil,
 4 gas, or other minerals that is reserved to an Indian owner
 5 in any sale made pursuant to this section shall be reserved
 6 in a nontrust and unrestricted status, unless the Secretary
 7 makes the determination referred to in subsection 10 (b).
 8 The Secretary is authorized to execute all appropriate title
 9 documents for sales made pursuant to this section, and to
 10 distribute the proceeds of such sales in accordance with the
 11 regulations applicable to individual Indian moneys. No sale
 12 under the provisions of this section shall include any mineral
 13 estate that has been reserved to any Indian tribe by other
 14 provisions of law.

15 SEC. 2. The Secretary may, when he deems it in the
 16 best interests of the Indian owners, obtain a power of at-
 17 torney from the owner of a non-Indian or unrestricted in-
 18 terest in the land to be sold authorizing the Secretary to
 19 sell and convey such interest.

20 SEC. 3. For the purposes of this Act, the Secretary may
 21 represent any Indian owner who is a minor, or who is non
 22 compos mentis, and after giving reasonable notice by publi-
 23 cation of the proposed sale, he may represent an Indian
 24 owner who cannot be located.

25 SEC. 4. All sales of lands authorized by section 1 of

1 this Act shall be by competitive bid, except that a sale may
 2 be made to one of the owners of an interest in the land, or
 3 to the tribe within whose reservation the land is located, at
 4 not less than the appraised value of the land if none of the
 5 owners after reasonable notice objects. If a timely objection
 6 is made, the sale shall be by sealed, competitive bid, subject,
 7 upon request made prior to the solicitation of bids, to the
 8 right of the tribe or any of the Indian owners to ask im-
 9 mediately after bids are opened that the land be sold at
 10 auction, in which event auction bidding shall be limited to
 11 persons who submitted sealed bids in amounts not less than
 12 75 per centum of the appraised value of the land, the Indian
 13 owners, and the tribe. The highest sealed bid shall be con-
 14 sidered the opening auction bid. No sale shall be made
 15 unless the price is substantially equal to the appraised value.
 16 Title to any land purchased by a tribe may be taken in
 17 trust for the tribe if it is located within the boundaries of the
 18 reservation. Title to any land purchased by an individual
 19 Indian, or by a tribe if the land is outside the boundaries of
 20 the reservation, shall be taken in the name of the purchaser
 21 without any restriction on alienation, control, or use, unless
 22 the Secretary makes the determination referred to in subsec-
 23 tion 10 (b) with respect to an individual Indian.

24 SEC. 5. (a) In order to assist tribes that wish to
 25 purchase land offered for sale under the provisions of this

1 Act, the Secretary of the Interior is authorized to make
2 a loan to any tribe under the conditions stated below, pro-
3 vided the tribe does not have funds available in an amount
4 that is adequate to make the purchase and is unable to
5 obtain a loan from other sources. Such loan shall be made
6 from the revolving funds referred to in section 9 of this
7 Act.

8 (b) The amount of the loan shall not exceed the ap-
9 praised value of the land plus the value of any other prop-
10 erty the tribe may mortgage or pledge as security for the
11 loan.

12 (c) The tribe shall give to the United States a mort-
13 gage on the land purchased with the loan, and on any other
14 tribal property which the Secretary deems necessary to se-
15 cure the loan adequately.

16 (d) The loan shall be for a term of not to exceed twenty-
17 five years, and shall bear interest at a composite rate con-
18 sisting of (1) a rate equal to the current average market
19 yield on outstanding marketable obligations of the United
20 States of comparable maturities during the month preceding
21 the month in which the loan is made, as such rate is deter-
22 mined by the Secretary of the Treasury, plus (2) a rate,
23 to cover losses and administrative expenses, determined
24 by the Secretary of the Interior, which rate shall be not less
25 than one-half of 1 per centum and not more than 1 per

1 centum. The loan need not require repayment in equal in-
2 stallments, but it shall require repayment according to a
3 schedule that will fully amortize the loan within the time
4 specified. In the event of a default in the repayment of the
5 loan, the Secretary of the Interior shall take such action as
6 he deems necessary to protect the interests of the United
7 States. If during the period of repayment the tribe is
8 awarded a money judgment against the United States in ex-
9 cess of the unpaid balance of the loan, the entire unpaid
10 balance shall be collected from the appropriation to satisfy
11 the judgment.

12 (e) Before a loan is made the tribe shall submit for
13 approval of the Secretary of the Interior a master plan for
14 the use of all lands to be purchased. Any tribe preparing a
15 plan may call upon the Secretary for technical assistance,
16 and the Secretary shall render such assistance as may be
17 necessary. Such plan shall include provision for consolida-
18 tion of holdings of the tribe, or acquisition of sufficient lands
19 in conjunction with those held to permit reasonable economic
20 utilization of the land and repayment of the loan. The
21 Secretary shall not approve a tribal plan unless it is agreed
22 to by a majority of adult tribal members, both on and off
23 the reservation, who vote in a referendum for that purpose.
24 Such plan may be revised from time to time with the ap-

1 proval of the Secretary, but without the need for a
2 referendum.

3 (f) The cost of managing any land purchased by a
4 tribe pursuant to this Act shall be borne by the tribe and
5 not by the United States.

6 SEC. 6. Any tribe that adopts, with the approval of the
7 Secretary of the Interior, a plan pursuant to subsection 5 (e)
8 of this Act, or any other plan that does not involve a loan
9 from the United States but which provides for the consolida-
10 tion, management, use, or disposition of tribal land, is
11 hereby authorized, with the approval of the Secretary of the
12 Interior, to sell any tribal land or other property in further-
13 ance of such plan.

14 SEC. 7. The Secretary of the Interior shall approve no
15 plan pursuant to this Act that contains any provision that
16 will prevent or delay a termination of Federal trust respon-
17 sibilities with respect to the land during the term of the
18 plan.

19 SEC. 8. Nothing in this Act shall repeal any authority
20 to sell trust or restricted land that is conferred by any other
21 provisions of law.

22 SEC. 9. (a) All funds that are now or hereafter a part
23 of the revolving fund authorized by the Act of June 18,
24 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat.
25 1968), and the Act of April 19, 1950 (64 Stat. 44), as

1 amended and supplemented, including sums received in
2 settlement of debts of livestock pursuant to the Act of May
3 24, 1950 (64 Stat. 190), sums collected in repayment of
4 loans heretofore or hereafter made, and sums collected as
5 interest or other charges on loans made, shall hereafter be
6 available for loans to organizations of Indians, Eskimos, and
7 Aleuts (hereinafter referred to as Indians), having a form
8 of organization that is satisfactory to the Secretary, and to
9 individual Indians of one-quarter degree or more of Indian
10 blood who are not members of or eligible for membership in
11 an organization that is making loans to its members, for
12 any purpose that will promote the economic development of
13 such organizations and their members, or the individual
14 Indian borrowers.

15 (b) The appropriation authorization in section 10 of
16 the Act of June 18, 1934 (48 Stat. 986), is hereby amended
17 by increasing it from \$10,000,000 to \$50,000,000.

18 SEC. 10. (a) In order to prevent the problem of multi-
19 ple ownership of undivided interests in Indian trust and
20 restricted land from growing as rapidly as it has grown in
21 the past, and at the same time protect the land ownership in-
22 terests of Indians who need special protection, the provisions
23 of this section shall apply notwithstanding any other provi-
24 sion of law.

25 (b) In any case of transfer of title to Indian trust or

1 restricted land or an interest therein by inheritance or de-
 2 vise, the title shall pass by operation of law in a nontrust
 3 and unrestricted status unless the Secretary of the Interior
 4 determines before the close of the probate proceeding that
 5 the Indian heir or devisee lacks ability, knowledge, ex-
 6 perience, and judgment to manage his business affairs with
 7 such reasonable degree of prudence and wisdom as will be
 8 apt to prevent him from losing his property or the benefits
 9 thereof.

10 (c) The Secretary of the Interior shall not approve
 11 any acquisition by an Indian of title to land or an interest
 12 in land in a trust or restricted status unless he makes the
 13 determination referred to in subsection (b) of this section.

14 (d) The Secretary of the Interior shall not extend by
 15 a general order applicable to a class of Indians a trust
 16 period that would otherwise expire on or after January 1,
 17 1964, and a trust period that expires prior to such date
 18 shall not be extended beyond that date by a general order.
 19 After January 1, 1964, a trust period shall be extended
 20 only by an order applicable to specified individual Indians
 21 and only on the basis of the determination referred to in
 22 subsection (b) of this section. Any extension of a trust
 23 period on an individual basis after January 1, 1964, may
 24 be for such term of years as the Secretary of the Interior
 25 deems appropriate, for the life of the individual, or until

1 the individual reaches the age of 21, subject to the right
 2 to terminate the trust in accordance with the provisions of
 3 this Act or any amendment thereof or supplement thereto.

4 (e) Any trust or restrictions on the title of an individual
 5 Indian that do not extend for a stated number of years or
 6 for an ascertainable term shall terminate on January 1,
 7 1964, unless extended by the Secretary of the Interior
 8 in accordance with subsection (d) of this section.

9 (f) The Secretary of the Interior shall review, as
 10 rapidly as possible, each trust or restriction on title to land
 11 or an interest in land that extends beyond January 1, 1964,
 12 and he shall terminate the trust or restriction on title unless
 13 he makes the determination referred to in subsection (b) of
 14 this section. Thereafter, the Secretary of the Interior shall
 15 continue to make such reviews in order to keep his deter-
 16 minations current.

17 (g) If the Secretary of the Interior terminates the trust
 18 or the restrictions on title to land or an interest in land owned
 19 by an Indian (and for this purpose a failure to extend a trust
 20 period shall not be regarded as a termination), the Indian
 21 may apply to the United States district court for the dis-
 22 trict in which the land is located for an order setting aside the
 23 Secretary's action, and the court shall have jurisdiction to
 24 issue such order if, in its judgment, the Indian does not meet
 25 the standard referred to in subsection (b) of this section.

(h) The Secretary of the Interior is authorized to issue such orders, documents, or evidences of title as he may deem appropriate to carry out the provisions of this section.

SEC. 11. This Act shall become effective six months after the date of enactment. During this interim period, the Secretary of the Interior shall notify each Indian tribe of the rights afforded by this Act in order that the tribe may make its plan for consolidating Indian holdings. Upon the conclusion of each Indian probate proceeding after the date of this Act, the Secretary shall also notify each Indian heir of the rights afforded by this Act.

2 1395

V BIFF

A BILL

Relating to the Indian heirship land problem.

By Mr. CHURCH

MARCH 21, 1961

Read twice and referred to the Committee on Interior
and Insular Affairs