



# CALIFORNIA INDIAN LEGAL SERVICES

BISHOP ♦ ESCONDIDO ♦ EUREKA ♦ OAKLAND ♦ SANTA ROSA ♦ WASHINGTON, D.C.

D.C. Office

1101 14<sup>th</sup> Street NW, Suite 400, Washington, D.C. 20005 ♦ Phone: 202/589-1860 ♦ Fax: 202/589-1890  
www.calindian.org ♦ cilsdc@calindian.org

---

## **S. 550 - THE AMERICAN INDIAN PROBATE REFORM ACT OF 2003 AND OTHER AMENDMENTS TO THE INDIAN LAND CONSOLIDATION ACT:**

### **DISTRIBUTION OF LATEST DRAFT (Version 67)**

Monday, September 29, 2003

### **OVERVIEW REPORT (4 PAGES)**

#### **SUMMARY**

S. 550 – the American Indian Probate Reform Act and other amendments to the Indian Land Consolidation Act (ILCA) will be the subject of many discussions at the Indian Land Working Group’s 13<sup>th</sup> Annual Indian Land Consolidation Symposium. The Symposium will be hosted by the Confederated Salish & Kootenai Tribes at the Flathead Reservation this week. David Mullon, Senior Counsel to the Majority on the Senate Committee on Indian Affairs, will be participating in the S. 550 panel at the Symposium. David has also agreed to a “listening session,” where – with the assistance of the Indian Land Working Group and the S. 550 Task Force – he will receive comments, feedback and suggestions on ways to improve S. 550 and ILCA. As we have anticipated since working on S. 1340 in the 107<sup>th</sup> Congress, we expect that S. 550 will be followed by subsequent technical amendments and other substantive changes to ILCA as we move toward implementation and see which measures are most effective in providing solutions for the diverse and unique circumstances found throughout Indian Country.

We are distributing the latest working draft of the S. 550 Substitute Bill from the Task Force for discussion at the Symposium; for further comments, feedback, and suggestions from throughout Indian Country; and as a proposed basis for the hearing on S. 550 before the Senate Committee on Indian Affairs on October 15, 2003.

Everyone agrees that the current level of fractionation of trust and restricted lands, and the associated management of the fractionated interests, pose massive problems for the owners of such interests (including Indian tribes), the Indian tribes with jurisdiction over such interests, and the Department of the Interior (DOI). S. 550 presents an opportunity for all of us to be a part of a solution which prevents further loss of trust and restricted lands, promotes the consolidation of fractionated interests in trust and restricted lands so that such lands and their resources (such as cultural and environmental resources) may be protected and/or put to productive use for housing, schools, health clinics, cultural centers, economic development and other purposes.

The S. 550 Task Force is mindful of the various interests of individual landowners, Indian tribes, and DOI, as voiced by members of the Task Force and by participants at the meetings and on the conference calls of the Task Force. The S. 550 Substitute Bill is an attempt to bring together the collective knowledge, experience, resources and vision of individual owners of trust and

restricted interests, Indian tribes, tribal staff, consultants and advocates, Indian organizations, Congressional members and staff, and DOI officials and staff to provide solutions with immediate and long-term benefits throughout Indian Country.

### **RECENT ON-GOING EFFORTS**

Another work session of the informal S. 550 Task Force took place at the Indian Pueblo Cultural Center in Albuquerque, New Mexico, on August 20<sup>th</sup> and 21<sup>st</sup>, 2003. The Task Force reviewed what was then the latest draft of S. 550. The Task Force was happy to welcome some new faces to these meetings, and benefit from the invaluable experience and insights shared by the participants. Meeting with the Task Force, once again, were David Mullon from the staff of the Senate Committee on Indian Affairs and members and participants on DOI's own internal work group. The Task Force also welcomed the feedback and recommendations of Wayne Nordwall, from the BIA Western Region Office in Phoenix, who testified on behalf of DOI in May, commenting on S. 550 as introduced. The Task Force collected a wealth of feedback, comments, and recommendations both at the meeting and since then, most of which are reflected in the current S. 550 Substitute Working Draft [67], dated today. There are continuing discussions regarding the implementation of various mechanisms such as acquisition programs and provisions, partition (both in-kind and by sale), and the conversion of unclaimed and abandoned property.

The Task Force is eagerly awaiting the release of DOI's proposed bill.

### **DRAFT HIGHLIGHTS**

The S. 550 Substitute Bill has been cleaned up and some sections – especially Sections 3 and 6 – have been reorganized. The Table of Contents has also been corrected and we hope that this draft is easier to follow and more helpful to you. We have also made a number of technical corrections and anticipate and invite your assistance in identifying others.

#### **Definition of “Indian”; Persons Eligible to Inherit Interests in Trust or Restricted Status**

The definition of “Indian” beginning on page 48 has been modified to acknowledge the existing breadth of the definition of “Indian” found under the Indian Reorganization Act, 25 U.S.C. Sec. 479, and eliminate redundancies with respect to “owners of trust or restricted interests.”

In addition, the list of persons to whom a person may leave trust or restricted interests in trust or restricted status has been expanded under Section 3, “Indian Probate Reform,” beginning on page 3, under a new “General Devise of an Interest in Trust or Restricted Land.”

Issues relating to probate reform that have been discussed and remain unresolved include: limiting the devise of life estates to only spouses and children; and limiting the devise of interests in fee status, thus requiring an owner of trust or restricted interests to obtain a fee patent during their lifetime and then devise such fee interests.

### Co-Owner Purchase at Intestacy; Purchase Option at Probate

This feature of the original S. 550 as introduced has been re-inserted in this draft as Indian co-owners of interests in trust and restricted lands would like the opportunity to purchase trust or restricted interests where there are no individual Indian heirs as provided in the “Nontestamentary Disposition” subsection. A closer technical analysis and possible redrafting will occur in the near future as we compare and contrast this feature with the “Purchase Option at Probate” which appears on page 33 and is subject to the exemptions under Section 10, “Consolidation of Highly Fractionated Parcels,” discussed briefly below.

### Highly Fractionated Parcels: Purchase Option, Partition, Unclaimed and Abandoned Property

The massive problem of fractionation demands aggressive measures carefully implemented. We have added a definition of “highly fractionated parcel” on page 49 for which we are looking for your input and suggestions. We are hoping to obtain data and statistics from the Department of the Interior that provides the number of fractionated parcels bearing various characteristics, including fractional interests below a certain size, a “large” number of owners, parcels currently producing no or “little” income or currently having “little” value, etc. We hope to accurately characterize those parcels which pose the most problems and obstacles in terms of productivity and management. Section 10 of the bill, “Consolidation of Highly Fractionated Parcels,” beginning on page 65, identifies the consolidation measures and corresponding exemptions or specific terms of application.

### Elimination of the “Passive Trust” as an Estate Planning Option; Elective Owner-Managed Interests

“Passive Trust” as previously proposed has been eliminated. Section 5, “Owner-Managed Interests,” provides an option for owners of trust and restricted interests to voluntarily elect to manage their own interests without the need for the approval of the Secretary of the Interior for certain transactions pertaining to such interests.

## **UPCOMING DEADLINES AND MEETINGS**

### **September 29 -**

**October 3, 2003** 13<sup>th</sup> Annual Indian Land Consolidation Symposium sponsored by the Indian Land Working Group and hosted by the Confederated Salish & Kootenai Tribes on the Flathead Reservation; S. 550 is the subject of a panel on Wednesday, October 1, 2003

**October 15, 2003** Senate Committee on Indian Affairs Hearing on S. 550, 10:00 am, Russell Senate Office Building, Room 485

**November 2003** Projected adjournment for the 1<sup>st</sup> Session of the 108<sup>th</sup> Congress

## **CORRECTIONS, ADDENDA, ETC.**

My apologies in advance for any errors, omissions, or delays in these reports and updates.

Please send corrections, comments, and suggestions directly to me at [loshiro@calindian.org](mailto:loshiro@calindian.org), at

the above address and fax number, or feel free to call me. As always, any assistance that you may offer is greatly appreciated. Mahalo nui loa. Thank you very much.

- *Lisa C. Oshiro, Directing Attorney, California Indian Legal Services, Washington, D.C.*