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5 U.S.C.A. § 706

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be--
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

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In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

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25 U.S.C.A. § 2719

§ 2719. Gaming on lands acquired
after October 17, 1988

**(a) Prohibition on lands acquired in trust by
Secretary**

Except as provided in subsection (b), gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless--

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and--

(A) such lands are located in Oklahoma and--

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) will not apply when--

(A) the Secretary, after consultation with the Indian tribe and appropriate State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of--

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

* * *

25 U.S.C.A. § 5110

Formerly cited as 25 USCA § 467

§ 5110. New Indian reservations

The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to

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add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

25 U.S.C.A. § 5125
Formerly cited as 25 USCA § 478

§ 5125. Acceptance optional

This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after June 18, 1934, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

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**TO GRANT TO INDIANS LIVING UNDER
FEDERAL TUTELAGE THE FREEDOM TO OR-
GANIZE FOR PURPOSES OF LOCAL SELF-
GOVERNMENT AND ECONOMIC ENTERPRISE**

**HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
SEVENTY-THIRD CONGRESS
SECOND SESSION**

ON

S. 2755

**A BILL TO GRANT TO INDIANS LIVING
UNDER FEDERAL TUTELAGE THE FREEDOM
TO ORGANIZE FOR PURPOSES OF LOCAL
SELF-GOVERNMENT AND ECONOMIC ENTER-
PRISE; TO PROVIDE FOR THE NECESSARY
TRAINING OF INDIANS IN ADMINISTRATIVE
AND ECONOMIC AFFAIRS; TO CONSERVE
AND DEVELOP INDIAN LANDS; AND TO PRO-
MOTE THE MORE EFFECTIVE ADMINISTRA-
TION OF JUSTICE IN MATTERS AFFECTING
INDIAN TRIBES AND COMMUNITIES BY ES-
TABLISHING A FEDERAL COURT OF INDIAN
AFFAIRS.**

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FEBRUARY 27, 1934

**Printed for the use of the
Committee on Indian Affairs**

[LOGO]

**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1934**

**[231] TO GRANT TO INDIANS LIVING
UNDER FEDERAL TUTELAGE THE FREE-
DOM TO ORGANIZE FOR PURPOSES
OF LOCAL SELF-GOVERNMENT AND
ECONOMIC ENTERPRISE**

THURSDAY, MAY 17, 1934

**UNITED STATES SENATE,
COMMITTEE ON INDIAN AFFAIRS,
*Washington, D.C.***

The committee met at 10.30 a.m., pursuant to call of the chairman, in room 424 Senate Office Building, Senator Burton K. Wheeler presiding.

Present: Senators Wheeler (chairman), Ashurst, Thomas of Oklahoma, Thompson, O'Mahoney, Frazier, and Norbeck.

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Present also: John Collier, Commissioner. Bureau of Indian Affairs; Ward Shepard, specialist on land policies, Bureau of Indian Affairs; Walter Woehlke, field representative, Bureau of Indian Affairs; Robert Marshall, Director of Forestry, Indian Bureau; Charles Fahy, First Assistant Solicitor, Department of Interior; Felix Cohen, Assistant to the Solicitor, Department of Interior; Earl Wooldridge, superintendent, Rocky Boy Reservation; C. I. Walker, superintendent of Fort Peck Reservation.

The CHAIRMAN. The committee will come to order. Has everybody been furnished with a copy of the committee print of the last bill that we have had up?

Senator ASHURST. I have.

(The bill under consideration is as follows:)

A BILL To conserve and develop Indian lands and resources; to establish a credit system for Indians; to provide for higher education for Indians; to extend toward Indians the right to form business and other organizations; and for other purposes

* * *

[241] The CHAIRMAN. I do not think we want to waste time with it. Is there any objection to that particular section?

SEC. 7. The Secretary of the interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this act, or to add such lands to existing reservations.

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I am going to suggest that we add a provision to that –

Provided, however, That only Indians who are enrolled members or their descendants of such tribe shall be placed upon such present reservation or upon lands added thereto.

The reason for that, in my judgment, is this: That I do not want it so that the Department might take some other tribe and place them in the middle of a present reservation. For instance, on the Fort Peck, if you went out there and you bought up a lot of lands within the boundaries of the Fort Peck Reservation, some Commissioner of Indian Affairs might come along and say, “We will take some roving band and we will place them over in the Fort Peck”; and when you did you would only stir up trouble among the different tribes.

Commissioner COLLIER. That would not prevent colonizing Indians?

The CHAIRMAN. Who are on the reservation?

Commissioner COLLIER. I mean these wandering bands of Indians who have no reservation at all – they could still be colonized somewhere, I suppose?

The CHAIRMAN. Oh, yes; they could be colonized some place else; but certainly you would not want to colonize them on a present Indian reservation.

Senator FRAZIER. They would be put on a new Indian reservation.

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The CHAIRMAN. They would be put on a new Indian reservation; yes.

* * *

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REPRODUCED AT THE NATIONAL ARCHIVES

**DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON**

Purchase-
Supplies
[42198-16]
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AUTHORITY

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AUTHORITY

OFFICE OF INDIAN AFFAIRS
RECEIVED
MAY 18, 1916
42198

Authority is hereby granted for you to expend, during the fiscal year 1916 from

- (1) "PURCHASE OF LANDS FOR LANDLESS INDIANS IN CALIFORNIA".....\$2,000.00..
- (2)\$
- (3)\$
- (4)\$

for the following:

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OBJECT. (HERE TABULATE SEPARATELY ITEMS FOR AGENCY, SCHOOL, POLICE, ETC., SHOWING PURPOSE OF EACH.)	Unit Price.		Amount.	
(Do not crowd this space – use leading sheets, Form 5-262 b, if necessary.) In the purchase of 40 acres of land in Amador County, California (described by metes and bounds) from the Ione Coal & Iron Company, for the use of 101 homeless California Indians, desig- nated as the Ione Band, at not to exceed \$50 per acre, PAYMENT TO BE MADE BY THE INDIAN OFFICE AF- TER GOOD AND SUFFI- CIENT TITLE, FREE FROM ALL ENCUMBRANCES, HAS BEEN PLACED ON RECORD AS BEING IN THE UNITED STATES To Secretary			2,000	00
MAY 17 1916	TOTAL		\$2,000	00

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RECEIVED

MAY 17 1916

SECY'S OFFICE

[Illegible]

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TO: For signature Commissioner of Indian Affairs ----- (Title or name.)* Washington, D. C. ----- (School.) ----- (Post office.) DO NOT WRITE IN THIS SPACE	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 12.5%;">HS</td> <td style="width: 12.5%;">D</td> <td style="width: 12.5%;">Pic</td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;">M</td> <td style="width: 12.5%;">K</td> </tr> <tr> <td colspan="6" style="padding: 5px;">MAY 18 1916</td> </tr> <tr> <td colspan="6" style="padding: 5px;"><i>Approved -</i></td> </tr> <tr> <td colspan="6" style="padding: 5px;">/s/ <u>Bob Sweeney</u></td> </tr> <tr> <td colspan="6" style="padding: 5px;"><i>Assistant Secretary</i></td> </tr> <tr> <td colspan="6" style="padding: 5px;">[Illegible]</td> </tr> </table>	HS	D	Pic		M	K	MAY 18 1916						<i>Approved -</i>						/s/ <u>Bob Sweeney</u>						<i>Assistant Secretary</i>						[Illegible]					
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*Fill in "The Superintendent" if a school superintendent; if not, insert name.

Any EXPLANATION OR JUSTIFICATION concerning this proposed expenditure must be made in a separate letter if space hereon be insufficient.

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78 Cong. Rec. 11726 (1934)

[11726] Mr. HOWARD. Mr. Speaker, I feel I ought to acquaint the membership of the House with the fact that our splendid Committee on Indian Affairs has held no less than 29 different sessions for the consideration of this bill. I feel I should further state that when the bill was finally reported every element of controversy had been eliminated. Manifestly, we cannot speak at length regarding the merits of this legislation, but I am quite sure that every one of the members of my own committee is qualified to answer such questions as those who desire information may submit.

* * *

[11727] While it is not as comprehensive as I personally would wish, this substitute measure contains many provisions which are fundamentals of a plan to enable the Indians generally to become self-supporting and self-respecting American citizens. Those provisions may be summarized as follows: Conservation of Indian lands; creation of a credit system for the Indians; extension of the trust period on Indian lands; organization of tribal councils responsive to the Indians and with authority to speak for them; education, vocational and technical, of the Indians; and admission of Qualified Indians to the Indian Service.

Before submitting a more detailed discussion of this bill I desire to call special attention to a few sections which constitute the backbone of the measure.

* * *

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Section 5: The sections mentioned are designed to prevent further loss of Indian land. But prevention is not enough. The Indians now landless must be provided for. This section undertakes to do this gradually through an annual appropriation for the purchase of land.

* * *

Mr. Speaker, analyzing somewhat more in detail the provisions of this measure, as they constitute a new policy in Indian affairs, let us examine that new policy to see wherein it differs from the old, which has brought disaster to the Indian, and to see how it offers a real hope for a way out of the admittedly evil conditions which confront us.

Reduced to its simplest terms, the present bill would prevent any further loss of Indian lands, would permit the purchase of additional lands for landless Indians, would set up a modern system of Indian agricultural and industrial credit, would permit Indian tribes or groups to incorporate for business purposes, would give Indian tribes the right to organize tribal councils for the promotion of the common welfare, would establish a special Indian civil service and give to qualified Indians the preference right to appointment in the Indian Service, and would create a loan fund for the vocational and professional training of Indians in order to qualify them for the Indian Service and for other employment.

It would strike a body blow at the twin evils of economic and social disintegration of the Indians. It would stop the sinister liquidation of Indian property and the

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equally sinister destruction of the Indian character wrought by generations of bureaucratic absolutism. It would give to the Indian at least a modest measure of economic security and economic opportunity. It would take him off the dole, out of the national poorhouse, and set him on the road to earning his own living, on the land, in the sweat of his brow. It would give to him what the white man has fought and died for over the centuries: The right to personal liberty and to a voice in the conduct of his daily life.

* * *

[11728] As the Indian estate has dwindled, Indian poverty and pauperism have increased alarmingly. It is estimated that there are now more than 100,000 landless Indians, a number which will inevitably and rapidly increase as long as the present system operates to deprive them of land and home. These landless Indians, in Nebraska, in the Dakotas, Minnesota, Michigan, Wisconsin, California, Nevada, and many other States, constitute a tragic problem in destitution and an acute problem of social relief which neither the Federal Government nor the States are adequately dealing with.

* * *

[11729] Land reform and in a measure home rule for the Indians are the essential and basic features of this bill. In order to make clear the scope and operation of the new Indian policy, I propose now to further discuss the various provisions of the bill.

* * *

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[11730] The preceding sections are safeguards to prevent further loss and wastage of Indian lands. But we must go further and actually restore some of the lost lands to the Indians. Section 5 sets up a land acquisition program to provide land Indians who have no land or insufficient land, and who can use land beneficially. For this purpose, the bill would authorize the appropriation of not to exceed \$2,000,000 in any one fiscal year. The Navajo Indians of Arizona and New Mexico are excluded from this purchase program because of pending bills to increase the area of the existing Navajo Reservation.

I have already said that there are more than 100,000 landless Indians in America today, and in addition many of the reservations are so riddled by alienation that their economic use for Indian grazing is impossible. This program would permit the purchase of land for many bands and groups of landless Indians and would permit progress toward the consolidation of badly checkerboarded Indian reservations, as well as provide additional agricultural land to supplement stock grazing or forestry operations. Considering the magnitude of the losses of Indian land brought about by the past 50 years of incompetent Federal guardianship, the purchase program here proposed is indeed a very modest restitution; and it is moreover an investment that will many times repay itself by taking Indians off the relief and ration rolls.

* * *

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Third Edition

**Documents of
United States
Indian Policy**

**EDITED BY
Francis Paul Prucha**

* * *

[225] 142. Indian Commissioner Collier on the
Wheeler-Howard Act

Extract from the *Annual Report of
the Commissioner of Indian Affairs*
1934

*Commissioner John Collier; the architect of the policy
embodied in the Wheeler-Howard Act, described
and praised the act in his annual report of 1934.*

* * *

[226] *THE ACT'S TWOFOLD AIM*

The Wheeler-Howard Act, the most important piece of Indian legislation since the eighties, not only ends the long, painful, futile effort to speed up the normal rate of Indian assimilation by individualizing tribal land and other capital assets, but it also endeavors to provide the means, statutory and financial, to repair as far as possible, the incalculable damage done by the allotment policy and its corollaries. Unfortunately, the beginning of the repair work had to be in large part postponed because the authorized appropriations could not be made by Congress after the

passage of the act during the closing days of the session.

* * *

*ECONOMIC REHABILITATION –
LAND PURCHASES*

To meet this situation, the act authorized a maximum annual appropriation of \$2,000,000 for the purchase of land for landless Indians. This maximum appropriation, even if continued over a term of years, will meet only the most pressing emergency-land needs of the Indians. It must be remembered that since 1887 the Indian race has lost the use of 90,000,000 acres, the cream of its land holding. With an annual appropriation of \$2,000,000 and an average base price of \$20 per acre, it would require 20 years to restore 2,000,000 acres for Indian use.

While Congress did not specifically direct the consolidation of Indian lands broken up and checkerboarded with white holdings in the allotment process, it authorized such consolidation and set up the machinery for it. Congress also authorized the establishment of new reservations for now completely landless and homeless Indians and directed that title to all newly purchased land should be taken in the name of the United States in trust for the Indian tribe or individual Indian, who will have the use and occupancy of the land. Thus the policy of common ownership of land enunciated in section 1 of the Wheeler-Howard Act is

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reaffirmed and implemented throughout the body of the statute.

* * *

[229] [*Annual Report of the Secretary of the Interior; 1934*, pp. 78-83.]
