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Authorizing the Assiniboine Tribe to File in the U.S. Court of Claims Any Claims Against the United States for Damages for Delay in Payment of Lands Claimed to be Taken in Violation of the U.S. Constitution, and for Other Purposes

United States Congress

US Senate

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AUTHORIZING THE ASSINIBOINE TRIBE TO FILE IN THE U.S. COURT OF CLAIMS ANY CLAIMS AGAINST THE UNITED STATES FOR DAMAGES FOR DELAY IN PAYMENT OF LANDS CLAIMED TO BE TAKEN IN VIOLATION OF THE U.S. CONSTITUTION, AND FOR OTHER PURPOSES

JUNE 25 (legislative day, JUNE 12), 1980.—Ordered to be printed

Mr. MELCHER, from the Select Committee on Indian Affairs and on behalf of Mr. KENNEDY, from the Committee on the Judiciary jointly, submitted the following

REPORT

[To accompany S. 1796]

The Select Committee on Indian Affairs and the Committee on the Judiciary to which jointly were referred the bill (S. 1796) to authorize the Assiniboine Tribe to file a claim in the U.S. Court of Claims and for other purposes, having considered the same, jointly reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

AMENDMENT IN THE NATURE OF A SUBSTITUTE

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. Notwithstanding sections 2401 and 2501 of title 28, United States Code, and section 12 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1052; 25 U.S.C. 70k), and notwithstanding the lapse of time, statutes of limitations, or the defense of res judicata or collateral estoppel, or any other provisions of law, jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and render judgment on any claim filed by the Assiniboine Nation or Tribe within one year from the date of this Act for the taking under the fifth amendment of the Constitution of the six million four hundred and seventy-seven thousand nine hundred and forty acres of land defined as the territory of the Assiniboine Nation in the Treaty of Fort Laramie of September 17, 1851 (11 Stat. 749), to which the Assiniboine Nation and the United States were parties, being the same land determined by the Court of Claims to have an average value of 50 cents per acre for a total of \$3,238,970 in Assiniboine Indian Tribe versus United States (77 Ct. Cl. 347), (1933), appeal dismissed and certiorari denied (292 U.S. 606) (1934) (hereinafter "prior case"): Provided, That the value of the land fixed at an average of 50 cents per acre in the prior case shall be binding on the parties in any suit brought under this Act.

EXECUTIVE COMMUNICATIONS

The pertinent communications received by the committees from the Department of the Interior and the Department of Justice setting forth agency recommendations relating to S. 1796 follow:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 4, 1979.

HON. JOHN MELCHER,
*Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 341, S. 1795, and S. 1796, bills to authorize, respectively, the Three Affiliated Tribes of the Fort Berthold Reservation, the Gros Ventre Tribe, and the Assiniboine Tribe and Blackfeet Tribe to file in the Court of Claims any claims against the United States for damages for delay in payment for land claimed to be taken in violation of the U.S. Constitution.

We defer to the views of the Department of Justice as to the advisability of the bills' enactment.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

RICK C. LAVIS,
Acting Assistant Secretary.

DEPARTMENT OF JUSTICE,
Washington, D.C., June 4, 1980.

HON. EDWARD M. KENNEDY,
*Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: You have requested the views of the Department of Justice concerning S. 341, S. 1795 and S. 1796, as revised. The bills would permit the Three Affiliated Tribes of the Fort Berthold Reservation, the Gros Ventre Tribes and the Blackfeet Tribe, respectively, to file claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the Constitution and for other purposes.

The revisions made bring the proposed treatment of the tribes into close approximation to that afforded the Sioux Tribe by the Act of March 13, 1978, Public Law 95-243, 92 Stat. 153 and provides a considerably narrower range of relief. In large part the revised bills answer the technical questions raised by the Department of Justice.

It remains unclear whether the United States is to receive credit, in reduction of any judgment which might be entered pursuant to these three bills, for the amount, if any, appropriated to pay the judgment in the "prior cases." If no such credit is allowed the United States will pay twice for the land itself.

It is suggested to clarify this point that each of the three bills be amended by adding at the end of section 2 the following:

"Provided, however, that the United States shall be entitled to an offset, against any judgment entered under authority of this Act, of the sum of money, if any, awarded as a judgment in the prior case."

The proposed amendment should eliminate any questions about double payment.

It should be emphasized, however, that the Department of Justice continues to oppose piecemeal erosion of the statutory policy prohibiting further consideration of pre-1946 claims, until a study is performed to evaluate the viability of the statute of limitations on pre-1946 claims.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committees note that no changes in existing law are made by S. 1796 as amended.

