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Authorizing the Secretary of the Interior to set aside certain judgment funds of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota

United States Congress

US Senate

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AUTHORIZING THE SECRETARY OF THE INTERIOR TO SET ASIDE CERTAIN JUDGMENT FUNDS OF THE THREE AFFILIATED TRIBES OF FORT BERTHOLD RESERVATION IN NORTH DAKOTA, AND FOR OTHER PURPOSES

MAY 17 (legislative day, MAY 16), 1983.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 727]

The Select Committee on Indian Affairs, to which was referred the bill (S. 727) to authorize the Secretary of the Interior to set aside certain judgment funds of the Three Affiliated Tribes of Fort Berthold Reservation in North Dakota, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 2, strike lines 1 through 14 and insert in lieu thereof the following:

SEC. 2. (a) Contingent upon availability of funds, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall deposit into a separate account—

(1) \$113,777.10 of the funds appropriated in satisfaction of the judgments awarded the Three Affiliated Tribes of Fort Berthold Reservation in dockets numbered 350-G and 54-81 L of the United States Court of Claims, plus

(2) all interest and investment income accrued on the funds described in clause (1) from the date on which the transcript of such judgment was filed with the Comptroller General of the United States, to the date of deposit described in clause (1)

The initial payment of \$113,777.10 shall be deposited when funds equal to this amount are released from the new member per capita escrow account. Thereafter, as any new membership application is denied, the funds thereby released shall be deposited in the account until such time as the sum de-

scribed in clause (2) is fully satisfied or there are no further membership applications to be processed. Any funds so deposited shall be distributed and used only as provided in this Act.

2. On page 3, lines 13 and 14, strike "58-81 L" and insert in lieu thereof "54-81 L".

3. On page 3, strike lines 21 through 24 and insert in lieu thereof the following:

(1) who filed an application for membership with the Three Affiliated Tribes of the Fort Berthold Reservation before July 10, 1982,

PURPOSE

The purpose of this legislation is to legislatively correct an error in the plan of the Three Affiliated Tribes of the Ft. Berthold Reservation for the use and distribution of funds in the amount of \$22,755,400 awarded the tribes by the U.S. Court of Claims in docket numbers 350-G and 54-81L on June 9, 1981. The legislation will provide for the final distribution of these funds in a manner consistent with a plan developed by the tribes in conjunction with the BIA, except that such legislation will additionally provide for the establishment out of such judgment funds of a special fund in the amount of \$113,777.10, plus interest and investment income accrued on such funds since the date of judgment.

BACKGROUND

On June 9, 1981, the U.S. Court of Claims entered an award of \$22,755,400 in favor of the Three Affiliated Tribes of the Ft. Berthold Reservation for the improper taking by the United States of lands previously set aside for the tribes. This award was actually paid into the Treasury on behalf of the tribes on Aug. 25, 1981. This award followed the enactment of legislation in the 96th Congress to waive the defense of res judicata and authorize the Court of Claims to consider whether the taking was in violation of the 5th Amendment of the U.S. Constitution and was thus subject to payment of interest from the date of the taking. The original judgment for the value of the land had been rendered some 50 years earlier but interest had not been awarded.

After negotiations between the tribes and their attorneys, an agreement was reached in which the attorneys agreed to waive 5% of their fee or \$113,777.10 (.5% of the total award) and that this would be treated as a donation to the Three Affiliated Tribes for the specific purpose of establishing a special fund to be used for "construction and maintenance of a hospital for the reservation, or matching funds". It was understood that these funds would have to be specially set aside or segregated to avoid their being lumped into the 20% reserved for other tribal programs and per capita distribution.

On November 12, 1981, the tribal business council agreed to accept this arrangement and an appropriate Resolution was adopted by a vote of 10 in favor and 1 not voting, directing that this special fund be made a part of any Judgment Fund Distribution Plan presented

by the BIA to the tribal members or the Secretary of the Interior. For some unexplained reason the plan prepared by the BIA did not provide for the establishment of this fund. The BIA "hearing of record" where the Plan was presented to the tribal members was held on Feb. 17, 1982. The failure to provide for the separate hospital fund was not noted at that time.

On March 9, 1982, the Department of the Interior presented the Plan to the Congress. After presentation the business council realized that the hospital fund had not been included. On May 21, 1982, the business council, by a vote of 7 in favor and 1 abstention, adopted a Resolution requesting legislation to amend the Judgment Plan to establish the special fund for "construction and maintenance of a tribal hospital." The plan submitted by the BIA to the Congress became effective on May 26, 1982, five days after the business council resolution was adopted.

On August 5, 1982, an initial partial per capita of \$4,000 was paid to each known eligible member of the tribes. The BIA reserved out from this distribution some \$1.6 million to provide for applicants whose eligibility had not yet been determined. On December 9, 1982, the tribal business council, by a vote of 9 in favor and 1 opposed, again adopted a Resolution requesting legislation to set aside the special hospital fund. On December 13, 1982, a second partial per capita distribution in the amount of \$45.16 was distributed to eligible tribal recipients.

STATUS OF JUDGMENT FUNDS

The attorney fee has been paid, and twenty percent of the remainder has been set aside for the tribal program portion of the Judgment Plan. Out of the remainder set aside for per capita distribution, the BIA reserved out \$1.6 million to provide for applicants whose eligibility remained to be determined. This sum has now been reduced to \$1.2 million.

The rejection rate for the pending applicants for per capita shares strongly indicates that the \$1.2 million on reserve will be fully sufficient to provide for setting aside the \$113,777.10 plus interest without jeopardizing entitlements of those who are determined to be eligible.

LEGISLATIVE HISTORY

S. 727 was introduced by Senator Andrews for himself and Senator Burdick on March 8, 1983. The Select Committee on Indian Affairs held hearings on this bill on April 28, 1983. The Committee met on May 12, 1983, and by a unanimous vote of a quorum present ordered the bill reported with amendments. There is no companion legislation in either the House of Representatives or the Senate.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, by unanimous vote of a quorum present, in an open business meeting on May 12, 1983, recommends that the Senate pass S. 727, as amended.

AMENDMENTS

There are three amendments to this bill. Amendment number one amends Section 2(a) to make clear that the obligation of the Secretary of the Interior to fund the account provided in this section is contingent upon the availability of funds from the judgment funds awarded the Three Affiliated Tribes. The second amendment corrects the docket number of claims awarded by the U.S. Court of Claims, and the third amendment corrects the reference to persons applying for participation in the judgment award.

SECTION-BY-SECTION ANALYSIS

Section 1. This section provides that this Act shall apply notwithstanding the provisions the Judgment Fund Distribution Act of 1973, as amended.

Section 2. This section provides for the establishment of a separate account out of judgment funds awarded the Three Affiliated Tribes for use in the planning and development of a hospital or a health care facility.

Section 3. This section provides for the per capita distribution of remaining judgment funds to eligible applicants for membership in the tribe.

Section 4. This section provides that any funds not consumed in funding of the health care account established in Section 2 or distributed in accordance with Section 3 shall be distributed and used in accordance with the programming aspect of the judgment fund distribution plan previously submitted to Congress which became effective on May 28, 1982.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 727, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 13, 1983.

HON. MARK ANDREWS,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 727, a bill to authorize the Secretary of the Interior to set-aside certain judgment funds of the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota, and for other purposes, as ordered reported by the Senate Select Committee on Indian Affairs, May 12, 1983.

Based on this review, the Congressional Budget Office estimates that enactment of this bill would not result in any additional cost to local, state, or federal governments. The bill establishes a specific plan for disbursing funds previously awarded to the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that S. 727, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The only communication received from the Executive branch was in the form of testimony at the hearing on April 28, 1983. The Administration supported the bill with amendments which have been adopted.

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