Calendar No. 506

72D CONGRESS, 1st Session | SENATE | REPORT No. 483

TO AMEND THE ACT OF MARCH 13, 1924 (43 STAT. L., 21), TO PERMIT THE FLATHEAD, KOOTENAI, AND UPPER PEND D'OREILLE TRIBES TO FILE SUIT IN THE COURT OF CLAIMS

MARCH 23 (calendar day, MARCH 28, 1932.)—Ordered to be printed

Mr. WHEELER, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2986]

The Committee on Indian Affairs, to whom was referred the bill (S. 2986) to supplement the act entitled "An act for the relief of certain nations or tribes of Indians in Montana, Idaho, and Washington," approved March 13, 1924 (43 Stat. 21), having considered the same, report favorably thereon with a recommendation that the bill do pass with the following amendments:

Strike out all after the enacting clause and insert the following:

That the Flathead, Kootenai and Upper Pend d'Oreille Tribes or nations of Indians of Montana shall be granted a further period of two years from the date of this act within which to file suit in the Court of Claims under the act of March thirteen, one thousand nine hundred twenty-four (Forty-three Statutes at Large, page twenty-one): *Provided*, That the limitation of attorneys' fees to $25,000 contained therein shall not apply to the Indians of the Flathead Reservation, Montana.

Amend the title to read as follows:

A bill to amend the act of March 13, 1924 (43 Stat. L. 21), so as to permit the Flathead, Kootenai, and Upper Pend d'Oreille Tribes or nations of Indians to file suit thereunder.

This bill has the recommendation of the Secretary of the Interior, in its amended form, as set forth in the following letter, which is appended hereto and made a part of this report.

DEPARTMENT OF THE INTERIOR,
Washington, March 2, 1932.

Hon. LYNN J. FRAZIER,
Chairman Committee on Indian Affairs,
United States Senate.

MY DEAR MR. CHAIRMAN: In further response to your request of January 16 for a report on S. 2986, which would supplement the act of March 13, 1924

(43 Stat. 21), and permit the Indians of the Flathead Indian Reservation to take their claims to the United States Court of Claims, I desire to invite attention to the inclosed memorandum report from the Commissioner of Indian Affairs. If amended as suggested by the commissioner, enactment of the bill is recommended.

In this connection we are advised by the Director of the Bureau of the Budget that the bill in its present form would not be in accord with the financial program of the President, but that the substitute form recommended by the Commissioner of Indian Affairs in the accompanying memorandum would not be in conflict therewith.

Very truly yours,

RAY LYMAN WILBUR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 8, 1932.

Memorandum for the Secretary:

Reference is made to the request of January 16, 1932, of the chairman, Senate Committee on Indian Affairs, transmitting for report copy of S. 2986 which would supplement the act of March 13, 1924 (43 Stat. L. 21) and permit the Indians of the Flathead Indian Reservation, Mont., to take their claims to the United States Court of Claims

From the records of this office, it appears that the Indians of the Flathead Reservation, Mont., have asserted a number of claims against the Government, the largest of which, that for rights in the common hunting ground established by article 3 of the Blackfeet treaty of October 17, 1855 (11 Stat. L. 657), will amount to practically $1,000,000. The other claims combined will no doubt amount to about $150,000, making a total of $1,150,000, which are being asserted by these tribes.

These Indians were authorized by the act of Congress of March 13, 1924 (43 Stat. L. 21), to file suit in the United States Court of Claims. They did not do so, although the Blackfeet and Gros Ventre Tribes of Indians in Montana, and the Nez Perce Tribe of Indians in Montana, Idaho, and Washington, filed suit No. E-427 in that court on July 10, 1925. The time in which a suit could be filed under the above act was stipulated therein as being two years from the date of its approval. This time expired March 13 1926.

The Flathead Indians entered into a contract with an attorney to represent them and file a petition, which contract was approved June 26, 1924. Neither the Indians nor the attorneys submitted any showing as to the necessity for a separate jurisdictional act.

The bill as drawn appears to fully protect the Indians, the attorneys, and the United States, but attention is invited to section 9, page 6, thereof. In connection with section 9 of the bill attention is invited to section 8 of the act of May 14, 1926 (44 Stat. L. 555-556). It would appear that section 9 was modeled after section 8 of the act of 1926 which would permit the Chippewa Indians of Minnesota to take their claims to the Court of Claims.

Under section 8 of the act of 1926, the attorneys for the Chippewa Indians filed certain bills for expenses with the Court of Claims as provided thereunder. The court rendered an opinion on December 5, 1927, in which the court declined to take action for the reason that the auditing of claims was a ministerial rather than a judicial matter and that the court had no facility for the purpose of auditing claims of attorneys which might be presented under the provisions of the above section. Subsequent to the decision of the Court of Claims relative to expenses for Chippewa attorneys an amendment thereto was obtained by the act of April 11, 1928 (45 Stat. L., 423), which took jurisdiction over claims of this nature from the United States Court of Claims and placed it under the Department of the Interior. It further appears that payment of expenses is provided for adequately in section 5, page 5, of the bill and that section 9 is unnecessary. It is, therefore, suggested that section 9 of this bill, including all of lines 16 to 22 inclusive, page 6, be eliminated therefrom and that section 10, beginning in line 23, be changed to section 9. With this amendment it is believed that the bill would adequately provide for the adjudication of the claims of the Flathead Indians.

While the bill appears to fully protect the Indians yet on account of certain objectionable features thereto, especially to section 9, and the further fact that it is believed that the same purpose can be served by an amendment to the act

of 1924, supra, it is recommended that S. 2986 be amended by striking out all after the enacting clause and inserting:

"That the Flathead, Kootenai, and Upper Pend d'Oreille Tribes or nations of Indians of Montana shall be granted a further period of two years from the date of this act within which to file suit in the Court of Claims under the act of March thirteen, one thousand nine hundred twenty-four (Forty-three Statutes at Large, page twenty-one): *Provided*, That the limitation of attorneys' fees to $25,000 contained therein shall not apply to the Indians of the Flathead Reservation, Montana."

Should the bill be amended as suggested, the title thereof should be changed to read:

"A bill to amend the act of March 13, 1924 (43 Stat. L., 21), so as to permit the Flathead, Kootenai, and Upper Pend d'Oreille Tribes or nations of Indians to file suit thereunder."

The enactment of this legislation now will result in no immediate charge upon the Federal Treasury, since a considerable time will be required for preparation and filing of the suit and final adjudication thereof by the court. We, therefore, recommend enactment of S. 2986, if amended in accordance with the preceding paragraph.

C. J. RHOADS, *Commissioner*.

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