

CLAIMS OF THE SALISH AND KOOTENAI TRIBES OF
INDIANS OF THE FLATHEAD RESERVATION, MONT.

JULY 15 (legislative day, JULY 5), 1946.—Ordered to be printed

Mr. O'MAHONEY, from the Committee on Indian Affairs, submitted
the following

REPORT

[To accompany S. 2428]

The Committee on Indian Affairs, to whom was referred the bill (S. 2428) conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and render judgment in any and all claims which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana, or any tribe or band thereof, may have against the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The purpose of this bill is to confer jurisdiction upon the Court of Claims with respect to all legal and equitable claims which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana may have against the United States.

The bill consists of a redraft of H. R. 2678, which passed both Houses during this session of the Congress, but which was returned by the President without his approval on June 28, 1946. The bill in its present form eliminates the features of H. R. 2678 which were objected to by the President in his veto message.

The committee amendment, which strikes out, beginning with the first comma in line 3, page 2, down through and including the word "Indians" in line 19, was suggested by the Department of Justice for purposes of clarification. The language deleted by this amendment undertook to set out in detail certain types of claims with respect to which jurisdiction is to be conferred. With this language omitted the bill will confer jurisdiction over "all legal and equitable claims of whatsoever nature which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation of Montana, or any tribe or band

thereof, may have against the United States." The committee feels that the matters which were set out in detail in the bill as introduced are covered by the language above quoted, and that the elimination of the detailed language will avoid possible future litigation to determine its meaning.

The purposes of the bill are explained in detail in the report of your committee on S. 782, which was the Senate companion bill to H. R. 2678 (Rept. No. 1325, 79th Cong.).

The message of the President accompanying his return of H. R. 2678 is as follows:

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RETURNING WITHOUT APPROVAL THE BILL (H. R. 2678) CONFERRING JURISDICTION UPON THE COURT OF CLAIMS TO HEAR, EXAMINE, ADJUDICATE, AND RENDER JUDGMENT IN ANY AND ALL CLAIMS WHICH THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF INDIANS OF THE FLATHEAD RESERVATION IN MONTANA, OR ANY TRIBE OR BAND THEREOF, MAY HAVE AGAINST THE UNITED STATES, AND FOR OTHER PURPOSES

To the House of Representatives:

I return herewith, without my approval, the bill (H. R. 2678) conferring jurisdiction upon the Court of Claims, to hear, examine, adjudicate, and render judgment in any and all claims which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana, or any tribe or band thereof, may have against the United States, and for other purposes.

This bill proposes to confer jurisdiction upon the Court of Claims to adjudicate any and all legal and equitable claims which the Confederated Salish (or Flathead) and Kootenai Tribes of Indians of the Flathead Reservation in Montana may have against the United States, including any claims arising under the treaty of July 16, 1855 (12 Stat. 975), or any subsequent treaty, agreement, act of Congress, or Executive order. The jurisdiction thus to be conferred, it is provided, would extend to claims arising by reason of any lands taken from these Indians, including lands lost by erroneous surveys, or lands opened to settlement, lands used for dam, power, and reservoir sites or irrigation projects, or lands lost by submergence, resulting from the erection of reservoirs, without compensation and without the consent of the Indians given in the usual manner. The bill declares that any taking of the lands of the Indians by the United States, without compensation and without their consent, or the reservation thereof for any of the above purposes, to be sufficient grounds for suitable relief, and the court would be required to award the Indians just compensation for such lands as for a taking under the power of eminent domain.

In addition to other objectionable features of the bill, an attempt is made in its provisions to define the "grounds for equitable relief" and the basis upon which the court shall render judgment in favor of the Indians and award to them just compensation "as for a taking under the power of eminent domain." It is possible that under the provisions of the bill the use by the United States of any lands "formerly * * * possessed" by the Indians, even though the Indians were without any recognized title, would constitute a sufficient basis "for equitable relief" and "for a taking under the power of eminent domain." Thus the bill does not merely waive the statute of limitations and laches and provide a forum for the adjudication of any preexisting claims which the Indians may have against the United States, but it seeks to create liability against the Government which would not otherwise exist. Moreover, by providing for the payment of just compensation, the bill would probably require the Government to pay interest, for a period of more than 30 years, on a claim that did not even exist prior to its passage. Neither on legal nor moral grounds would there seem to be any justification for legislation of this kind.

For these reasons, I am constrained to withhold my approval from the bill.

HARRY S. TRUMAN.

THE WHITE HOUSE, June 28, 1946.

H. R. 2678

SEVENTY-NINTH CONGRESS OF THE UNITED STATES OF AMERICA; AT THE SECOND SESSION, BEGUN AND HELD AT THE CITY OF WASHINGTON ON MONDAY, THE FOURTEENTH DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND FORTY-SIX

AN ACT Conferring jurisdiction upon the Court of Claims to hear, examine, adjudicate, and render judgment in any and all claims which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation in Montana, or any tribe or band thereof, may have against the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred upon the Court of Claims, with the right of appeal by either party to the Supreme Court of the United States, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims of whatsoever nature which the Confederated Salish and Kootenai Tribes of Indians of the Flathead Reservation of Montana, or any tribe or band thereof, may have against the United States, including, but not limiting the generality of the foregoing, claims arising under or growing out of the treaty of July 16, 1855 (12 Stat. 975; 2 Kappler 722), or any subsequent treaty or agreement, Act of Congress, or Executive order, or by reason of any lands taken from said Indians by Acts of Congress or otherwise, including lands lost to them by erroneous surveys, or lands opened to settlement, or used for dam, power, and reservoir sites and irrigation projects, or loss of lands by submergence by erection of reservoirs, without compensation and without their consent given in the usual manner, or for the failure or refusal of the United States to protect the interests of any of said Indians in lands as to which they had or claimed possessory right of use and occupancy, or because of any mismanagement or wrongful handling of any of the funds, lands, properties, or business enterprises belonging to or held in trust for said Indians.

SEC. 2. That suit or suits under this Act may be instituted by the Confederated Salish and Kootenai Tribes of Indians, or any tribe or band thereof, either separately or jointly, as party or parties plaintiff, against the United States as party defendant, by filing within five years after the approval of this Act a petition or petitions in the Court of Claims and serving with respect to each suit a copy thereof on the Attorney General of the United States, who, either in person or by some attorney from the Department of Justice to be designated by him, shall appear and defend the interests of the United States. Such petition or petitions shall set forth the facts upon which the claim or claims for recovery is or are based and shall be verified by the attorney or attorneys employed by said Indians, under contract approved in accordance with existing law, to prosecute said claims, which may be made upon information and belief, and no other verification shall be necessary. The petition or petitions shall be subject to amendment at any time prior to final submission of the case to the Court of Claims. Such petition or petitions may, in addition to alleging specific claims, demand a general accounting of all funds and property expended or used by the United States for the account of said Indians, in which event the General Accounting Office shall within a reasonable time from date of filing said petition or petitions make a complete audit of said accounts, and, in addition to the usual copies furnished the Attorney General, shall furnish a copy thereof to the attorney or attorneys for said Indians; and the court, after full hearing, shall state the account and render judgment in accordance therewith.

SEC. 3. That at the trial of any suit instituted hereunder the court shall apply as respects the United States the same principles of law as would be applied to an ordinary fiduciary and shall settle and determine the rights therein, both legal and equitable, of said Indians against the United States, notwithstanding lapse of time or statutes of limitation. In the determination of the validity of any claim asserted or defense interposed hereunder, the court shall have the full power and authority of a court of equity.

SEC. 4. That the court shall have authority by proper orders and process, to make parties to any suit or suits instituted hereunder any other tribe, band, or group of Indians deemed by it necessary or proper to a final determination of the matters in controversy.

SEC. 5. That in any suit instituted hereunder any letter, paper, document, map, or record in the possession, of any officer or department of the United States (or certified copies thereof) may be used in evidence and the departments of the Government of the United States shall give full and free access to the attorney or attorneys for said Indians to such letters, papers, documents, maps, or

records as may be useful to said attorney or attorneys in the preparation for trial or trials of such suit or suits

SEC. 6. That no payment or payments which have been made by the United States upon or in satisfaction of any claim or claims asserted in any suit brought hereunder, or expended for any of the said Indians, shall operate as an estoppel against any suit brought hereunder, but there shall be set off against any recovery obtained by said Indians hereunder any payment made by the United States on any claim asserted by said Indians, together with such gratuity expenditures as are directed to be set off by the Act of Congress, approved August 12, 1935 (49 Stat. 596): *Provided*, That no moneys expended for the benefit of said Indians under the Wheeler-Howard Act, approved June 18, 1934 (48 Stat. 984), shall be applicable as set-offs.

SEC. 7. That if the court shall find that any lands formerly belonging to or possessed by said Indians have been appropriated by the United States, or set apart and reserved as national reservations, dam, power, and reservoir sites, and for irrigation projects, or that loss of lands has been occasioned by submergence by the erection of reservoirs, or that lands have been taken for other public uses or otherwise reserved or disposed of in any manner whereby the said Indians have been deprived of the use or benefits of such lands and the natural resources thereof, without compensation therefor and without their consent it is hereby declared that such action shall be sufficient grounds for equitable relief, and the court shall render judgment in favor of said Indians, and shall award to them, as for a taking under the power of eminent domain, just compensation for all such lands, sites, projects, and natural resources.

SEC. 8. That the Attorney General of the United States and the Secretary of the Interior in behalf of the United States, and the attorney or attorneys representing said Indians, shall have authority, with the approval of the tribal council, at any time after the approval of this Act to compromise and settle any claim asserted by said Indians.

SEC. 9. That upon the final determination of any suit or suits instituted hereunder, whether by judgment, compromise, or otherwise, the Court of Claims, in the event of judgment for said Indians or, in the event any claim asserted by any of said Indians shall be compromised or settled without the institution of any suit hereunder, the Secretary of the Interior shall determine such fees or compensation to be paid the attorney or attorneys as said court or said Secretary shall find reasonable or equitable, and in addition thereto such actual and necessary expenses as shall have been incurred by the attorney or attorneys in the prosecution of said claims. In no case shall the fees or compensation decreed by said Court of Claims or by the Secretary of the Interior be in excess of the amount stipulated in the contract or contracts approved by the Commissioner of Indian Affairs and the Secretary of the Interior, and in no event to exceed 10 per centum of the amount of the recovery, and shall be paid out of any money appropriated by Congress for the benefit of said Indians pursuant to any judgment or settlement hereunder.

SEC. 10. That the amount of any judgment recovered or settlement made for said Indians, less attorneys' fees and expenses, shall be placed to the credit of said Indians in the Treasury of the United States and shall draw interest at the rate of 4 per centum per annum from date of judgment or settlement, and shall thereafter be subject to appropriation by Congress and used for the benefit of said Indians, including, but without limitations, the purchase of lands, livestock, farming implements, erection of buildings and improvements, and for productive enterprises, with the approval of the Secretary of the Interior and the consent of said Indians.

SAM RAYBURN,
Speaker of the House of Representatives.

KENNETH MCKELLAR,
President of the Senate pro tempore.

[Endorsement on back of bill:]

I certify that this Act originated in the House of Representatives.

SOUTH TRIMBLE, *Clerk.*
By H. NEWLIN MEGILL.