Senate Report 1002 to Accompany S. 2731, 5-13-1935, Indian Claims Commission Act.
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74TH CONGRESS, 1st Session | SENATE | REPORT No. 1002

INDIAN CLAIMS COMMISSION ACT

MAY 13 (calendar day, JULY 1), 1935.—Ordered to be printed

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2731]

The Committee on Indian Affairs, to whom was referred the bill (S. 2731) to create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes, having considered the same, report thereon with a recommendation that it do pass with the following amendments:

On page 2, line 19, after the word "all" insert the words "Claims arising under the Constitution, laws, or treaties of the United States".

On page 3, line 14, change the word "Complainant" to read "Complanants".

On page 3, line 16, after the word "and" insert the following words: "in connection with claims so transferred".

On page 3, line 18, strike out the word "terms" and insert in lieu thereof the word "provisions" and after the word "any" insert the words "other law or of any" and change the word "claim" to read "claims".

On page 3, line 19, change the period to a colon and insert the following:

Provided, That in cases now pending in the Court of Claims the transfer thereof to the Commission shall be made upon motion of the attorney of record for claimant in each case with the approval of the Secretary of the Interior and such attorney or attorneys shall proceed under his or their approved existing contract according to its terms.

On page 4, line 15, after the period insert the following words:

Such report shall show how each Commissioner voted upon such claims.

On page 6, line 6, after the word "attorney" insert a comma and the words "or attorneys".

On page 6, line 20, after the comma insert the words "or Alaska".

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On page 7, line 24, after the word "employ" insert the following words:

Subject to the provisions of the Classification Act of 1923, as amended.

This bill proposes to create an Indian Claims Commission to investigate and to determine the facts and the merits of all existing claims of Indian tribes against the United States and to report its findings with appropriate recommendations to Congress.

The Commission would be composed of three commissioners, appointed by the President with the advice and consent of the Senate, and would be equipped with the usual powers of a fact-finding commission to hold hearings and to examine witnesses. The Commission is directed to "make a complete and thorough search for all evidence" affecting claims upon its own initiative through investigations in the field and in Government records, utilizing in doing so, insofar as possible, Government employees now qualified in the work.

The interests of the Indian claimants in the investigations and determinations of the Commission are amply protected by the provisions of the bill requiring notice to all possible claimants, and notice and opportunity for hearing to all interested parties before making findings on any claim, and authorizing representation by attorneys.

Upon the completion of its investigations the Commission will make formal findings of fact and recommendations to Congress for action or nonaction upon the claims by Congress. If the claim has no merit, Congress will be so informed and may disregard such claim thereafter. However, where the claim has merit, the Commission will recommend either a direct settlement, or in those few cases where judicial action may be unavoidable, jurisdictional act giving adequate jurisdiction of such claim to the Court of Claims. Before the Court of Claims the findings of fact made by the Commission are to be accorded prima facie weight.

It is provided that all existing claims must be presented to the Commission within 5 years and that the work of the Commission will end after 10 years from the date of approval of the act. Annual reports of the progress of its work are required to be presented to Congress.

The outstanding benefits which would follow the establishment of such a commission may be summarized as follows:

1. The proposed method of handling Indian claims will expedite necessary work and will eliminate a great volume of unnecessary work since it will be free of the present divided responsibility between the Department of the Interior, Department of Justice, and General Accounting Office, and since the Commission can direct and standardize research, discard at the outset worthless claims, and avoid duplication of research by handling related claims simultaneously.

2. The Commission will be prepared to determine claims in a more competent manner than that afforded by the present system. Instead of hasty, political decisions by Congress upon individual jurisdictional bills, and haphazard and partisan preparation of the claim for trial, the Commission, as an impartial expert body, will assume the burden of investigation and the accurate advising of Congress in an authoritative and conclusive manner.

3. A commission, acting as adviser to Congress, offers the only way in which claims founded upon political wrongs, mainly those claims which seek revision of, or compensation for, inequitable treaties, can be settled. The Court of Claims repeatedly dismisses such claims for lack of jurisdiction, placing at no avail the prolonged effort required to reach that court.

4. From the foregoing it is evident that great expense will be saved the Government and the Indians. The present cumbersome and inconclusive method, estimated to require a century to reach completion, means increasing direct and tangible costs to the Government and prohibitive expense or exorbitant outlay of tribal funds to the tribes.

5. Finally, just determination and settlement of just claims will improve the morale of the Indians and the effectiveness of the Government service among them.

Representatives of the Department of Justice, Department of Interior, attorneys representing Indian tribes, and representatives of Indian welfare organizations were present at hearings which were held on this bill, who suggested various amendments to the bill, some of which were adopted by the committee and is recommended in this report. Said representatives of the Departments and others representing various interests manifested their approval generally of this proposed legislation.

A copy of the report of the Secretary of the Interior on this bill, dated June 5, 1935, is attached hereto and made a part of this report which reads as follows:

INTERIOR DEPARTMENT,
Washington, June 5, 1935.

Hon. ELMER THOMAS,
Chairman Committee on Indian Affairs,
United States Senate.

MY DEAR MR. CHAIRMAN: Reference is made to your request of May 2 for a report on S. 2731, a bill to create an Indian Claims Commission to investigate and determine the facts and the merits of all existing claims by Indian tribes against the United States and to report its findings with appropriate recommendations to Congress.

The proposed commission, to be composed of three commissioners appointed by the President with the advice and consent of the Senate is authorized to make a thorough search for all evidence on the facts involved in such claims, but may make determinations only after notice and hearing to all the interested parties. It is contemplated that the commission shall receive claims for a period of 5 years and that its work shall be completed within 10 years after its creation. It may report its recommendations to Congress as its determinations are made, and annual reports to Congress of the progress of its work are required.

The bill does not itself provide for the adjudication of any Indian claim. Its purpose is to expedite the handling of such claims, to provide Congress with competent, impartial advice on the disposition of the numerous requests by Indian tribes for the passage of jurisdictional acts or the allowance of appropriations, and to relieve the Court of Claims of the burden of highly complicated and necessarily prolonged fact determination.

Congress is now endlessly confronted with the challenge (a) to enact direct settlements with Indian tribes, and (b) to enact jurisdictional bills which more or less predetermine the ultimate settlement, in both cases without any adequate data upon which to reach a decision. Nor can this data be accumulated through legislative hearings in Washington. The immediate and, if necessary, sufficient justification of the pending bill lies in the above fact and in the way the bill would change that fact.

As a result of inadequate data the jurisdictional acts, among other peculiarities, often are inconsistent with one another, sometimes in the direction of leniency,

and sometimes in the opposite direction, and in few or none of them are the authorizations and limitations based upon the particular and local history of the tribe and of its relations with the Government.

At present, after long preliminary negotiation and lobbying, eventuating in a jurisdictional act, a petition is filed in the Court of Claims, and the General Accounting Office goes through all records of expenditures, accumulating as certain or possible set-offs the detailed record of all the gratuitous expenditures for or in behalf of each tribe. The Indian Office, simultaneously or subsequently, prepares a lengthy history and discussion of the case. While the General Accounting Office is working on one case, many others are waiting their turn because much of the data is contained only in a single, unduplicated series of badly worn-out records.

After many years spent in preparation the Government and the tribe go into combat before the Court of Claims under a jurisdictional act which usually is believed and admitted by all the parties to be inequitable, and which does not and should not have the character of an act for final settlement. Largely because of the unsatisfactory character of the acts, recovery in the Court of Claims by Indian tribes has become very infrequent, with resulting justifiable dissatisfaction by the tribes and their return to Congress for further redress.

The total operation is greatly influenced by elements of sheer accident, such as the possession by Indians of the wherewithal to hire attorneys for the initial lobbying of their case.

The above unsatisfactory state of affairs would be completely changed through the work of the Commission under the pending bill. The Commission would dispose of real and alleged claims, tribe by tribe. Its recommendations, whether for direct settlement or for jurisdictional acts, would be merely recommendations so far as Congress and the Budget were concerned, but its findings of fact would be a permanent accomplishment. The Commission would be empowered and expected to take into account the particular historical circumstances of each tribe—its treaties and its land occupancy and its subsequent fate at the hands of the Government—and its present needs. In the ascertainment of set-offs, the Commission would prepare for submission to Congress a total of possible set-offs such as in the commission's judgment may be fair in the light of the particular circumstances. In contrast to the present system, set-offs other than direct payments upon the claim need not be searched for except in the case of claims already determined to have merit, thus saving effort and expense. Furthermore, in ascertaining set-offs the Commission would be in a position to prevent inequality of treatment by applying standards for the direction of research. Through photostating some of the records in the General Accounting Office, the Commission would be able to dispose simultaneously of the set-off questions affecting numerous tribes. The commission would draw into its total picture the information in the possession of the Office of Indian Affairs—information which ordinarily, at present, is not put together until after a jurisdictional act, with all its fatalities, has become law.

Based upon the findings of fact and the recommendations of the Commission, there undoubtedly will be many cases where Congress and the tribes can readily agree upon a direct final settlement, thus making unnecessary any litigation in the Court of Claims or the Supreme Court of the United States.

Where such direct settlement may prove to be not feasible because of unsettled legal questions, the claim may be submitted to the Court of Claims under an act framed on the basis of the research of the Commission to present adequately all the issues requiring determination. As the findings of the Commission are prima facie evidence of the facts of the claim, further investigation of such facts is in most cases rendered unnecessary.

There will be no need of paying to private attorneys amounts which have aggregated millions, and which, before the final settlement is achieved under the now existing arrangement, would total tens of millions.

A somewhat increased cost to the Government—i. e., simply the expenses of the Commission itself—will be balanced by a permanent reduction of costs in the Indian Office, the General Accounting Office, the Department of Justice, and the courts. And finally, it will be possible for the Indians, Congress, and the country to know with a clear conscience, that at least the facts have been ascertained, and that the merits of the cases are set down in an adequate manner. It is believed that just, final settlement would follow as a matter of course.

I recommend enactment of Senate 2731.

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The Assistant Director of the Bureau of the Budget has advised that this bill "would not be in conflict with the financial program of the President, if section 3 were amended in accordance with the recommendation contained in the attached copy of the Attorney General's letter to me of May 24, 1935, and if section 9 were amended to provide that the employees of the Commission shall be subject to the provisions of the Classfication Act of 1923, as amended."

To comply with the suggestion of the Assistant Director of the Budget, the words "subject to the provisions of the Classification Act of 1923, as amended", set off by commas, could be inserted on page 7, line 24, after the word "employ."

The amendment suggested by the Attorney General would be on page 4, line 25, to strike out the words "accorded prima facie weight" and to insert "admissible in evidence but may be reviewed by the court either on the basis of evidence taken before the Commission, or on additional evidence, or both."

Sincerely yours,

HAROLD L. ICKES, *Secretary of the Interior.*

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