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AUTHORIZING APPROPRIATIONS FOR THE INDIAN CLAIMS COMMISSION FOR FISCAL YEAR 1974

March 2, 1973.—Ordered to be printed
Filed under authority of the order of the Senate of March 1, 1973

Mr. Jackson, from the Committee on Interior and Insular Affairs, submitted the following

REPORT
[To accompany S. 721]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 721) to authorize appropriations for the Indian Claims Commission for fiscal year 1974, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 721 is to authorize appropriations for the expenses of the Indian Claims Commission for fiscal year 1974. This is in accordance with the provisions of Public Law 92-265 which extended the life of the Indian Claims Commission until April 10, 1977, and stated that the Commission must seek annual authorizations for appropriations.

BACKGROUND

The Indian Claims Commission was established to provide a forum for the adjudication of all claims by Indian tribes against the United States that existed on the date of the act, August 13, 1946. Prior to the creation of the Commission such claims were heard by the Court of Claims under special jurisdictional acts. Tribes with pending claims were given 5 years in which to file them, and the Commission was given until April 10, 1957, to complete its work.
Because of the extremely large number of claims filed and the complexity of these claims, and also due to dilatory practice permitted by the former three-man Commission in its early years, it has proven necessary for Congress to extend the Commission's life for successive 5-year periods on four separate occasions. The act of July 24, 1956 (70 Stat. 624), extended the life of the Commission until April 10, 1962. This extension did not result in the Commission's completing its work and the life of the Commission was again extended for 5 years by the act of June 16, 1961 (75 Stat. 92) until April 10, 1967.

A third extension of the life of the Commission was approved by Congress in 1967. Under the provisions of the act of April 10, 1967 (81 Stat. 11), the Commission's termination date was extended until April 10, 1972. In an effort to accelerate completion of the Commission's work, that legislation authorized an expansion of the membership of the Commission from three to five Commissioners. Provision was also made for the Commission to prepare a trial calendar within 1 year to set a date no later than January 1, 1970, for the trial of each pending claim.

The fourth extension was the act of March 30, 1972, Public Law 92-265, which extended the life of the Commission until April 10, 1977. In addition, the act provided for dissolution of the Commission on April 10, 1977, and any cases still pending before it would be transferred to the U.S. Courts of Claims which would be empowered to complete adjudication of such cases.

As stated previously, that act also provides that appropriations for fiscal years 1974, 1975, 1976, and 1977 must be authorized annually by Congress and also requires the Commission to submit a progress report to Congress at the beginning of each session.

**COMMITTEE AMENDMENT**

The Committee on Interior and Insular Affairs in executive session on February 28, 1973, unanimously ordered S. 721, as amended, reported favorably to the Senate.

**COMMITTEE RECOMMENDATION**

The letter from the Indian Claims Commission submitting and recommending this legislation is set forth as follows. Also set forth is the progress report submitted to Congress in accordance with the provisions of Public Law 92-265 which contains the status and projected completion dates of all claims pending in the Indian Claims Commission as of December 31, 1972.

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**DEPARTMENTAL REPORTS**

The letter from the Indian Claims Commission submitting and recommending this legislation is set forth as follows.
Summary of Indian claims cases on Dec. 31, 1972

Chains filed:
Received through Aug. 13, 1972 370
Causes severed from original claims and redeposited as separate claims 241

Total docketed: 611

Chains disposed of:
By awards certified to the Treasury Department totaling $425,926,863.92 268
By orders of dismissal: 176

Total disposed of: 384

Pending claims cases:

Summary of the status of pending Indian claims:
Final awards with appeal from running totaling $6,854,926.06 in docket Nos. 175-B, 342-A, and 350-A, 3-1.
Final awards on remand: from the Court of Claims totaling $812,832.51 in docket Nos. 74, 75, 151; 116, 271, 217, 95; and 763-1.

On appeal in the Court of Claims from:
Final determinations and awards totaling $2,928,715.15 in docket Nos. 10, 58, 30-A, 48-A, 287, 173-A, 283 and 350-A.

Interlocutory decisions in docket Nos. 73-A, 74 and 332-C; 57-A, 91, 193, 221, 246, 300-B and 350-C; 228, 327; 370; 501; and 343.

Orders of dismissal in docket Nos. 49, 502, and 301.

Subtotal on appeal: 7

Cases ordered dismissed pending on motives to rehear in docket Nos. 304 and 247.

Other cases before the Commission in various stages in litigation: 136

Total number of pending Indian claims cases: 227

PENDING INDIAN CLAIM CASES—DEC. 31, 1972

Explanation of symbols: The letter "b" marks the phase or phases in which the case is pending. The letter "c" indicates that the case is terminated in the commission for non-receipt of final offset.

Docket No. and plaintiff tribe, band or title, head or group, and comments

<table>
<thead>
<tr>
<th>Docket No.</th>
<th>Plaintiff Tribe</th>
<th>komment</th>
<th>Liability or Value</th>
<th>Amounting</th>
<th>Offset</th>
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See footnotes at end of table.
<table>
<thead>
<tr>
<th>Case No. and plaintiff tribe, band or group, and consent</th>
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<th>Value</th>
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<td>48-A:  Apache, Fort Sill, Oklahoma, et al.</td>
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<tr>
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<tr>
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<td>48-F:  Apache Tribe, Fort Apache, Arizona</td>
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<td>48-I:  Navajo Tribe, Fort Apache, Arizona</td>
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<td>September 1976</td>
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See footnotes at end of table.
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<th>Date</th>
<th>Number</th>
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<th>Amount Due</th>
<th>Ongoing Issues</th>
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</tr>
</tbody>
</table>

Explanations of symbols: The letter "x" indicates that the case is submitted to the commission for its decision. The letter "c" indicates that the case is in the post-trial briefing stage. The letter "s" indicates that the case is in the post-trial hearing stage. The letter "b" indicates that the case is in the post-trial briefing stage. The letter "r" indicates that the case is in the post-trial hearing stage. The letter "a" indicates that the case is in the post-trial briefing stage. The letter "d" indicates that the case is in the post-trial hearing stage. The letter "t" indicates that the case is in the post-trial briefing stage. The letter "f" indicates that the case is in the post-trial hearing stage. The letter "h" indicates that the case is in the post-trial briefing stage. The letter "m" indicates that the case is in the post-trial hearing stage. The letter "n" indicates that the case is in the post-trial briefing stage. The letter "o" indicates that the case is in the post-trial hearing stage. The letter "p" indicates that the case is in the post-trial briefing stage. The letter "q" indicates that the case is in the post-trial hearing stage. The letter "u" indicates that the case is in the post-trial briefing stage. The letter "v" indicates that the case is in the post-trial hearing stage. The letter "w" indicates that the case is in the post-trial briefing stage. The letter "y" indicates that the case is in the post-trial hearing stage. The letter "z" indicates that the case is in the post-trial briefing stage. The letter "g" indicates that the case is in the post-trial hearing stage. The letter "i" indicates that the case is in the post-trial briefing stage.
## PENDING INDIAN CLAIM CASES—DEC. 31, 1972

The letter "x" indicates that the case is submitted to the Commissioner for its decision. The letter "s" indicates that the case is in the pre-trial briefing stage. The letter "c" indicates that the case is consolidated with 1 or more other cases. The letter "v" indicates that the case is in the pre-trial briefing stage.

### Table 10

<table>
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<tr>
<th>Docket Nos. and plaintiff tribe, band or group, and comments</th>
<th>Liability or title</th>
<th>Value</th>
<th>Amounting</th>
<th>Offsets</th>
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### Table 11

<table>
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<tr>
<th>Docket Nos. and plaintiff tribe, band or group, and comments</th>
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<th>Value</th>
<th>Amounting</th>
<th>Offsets</th>
<th>Projected conclusion date</th>
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</thead>
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<tr>
<td>380-A: Shoshone-Bannock, Portland &amp; Western Shoshone of Nevada</td>
<td>Shoshone-Bannock &amp; Pem Tapm, and the Tribe of the Prairie Band of Indians of Oklahoma</td>
<td>$0</td>
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<td>381-A: Shoshone-Bannock, Portland &amp; Western Shoshone of Nevada</td>
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<td>382-A: Shoshone-Bannock, Portland &amp; Western Shoshone of Nevada</td>
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<td>September 1975.</td>
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<td>384-A: Shoshone-Bannock, Portland &amp; Western Shoshone of Nevada</td>
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<td>385-A: Shoshone-Bannock, Portland &amp; Western Shoshone of Nevada</td>
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<td>387-A: Shoshone-Bannock, Portland &amp; Western Shoshone of Nevada</td>
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<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>September 1975.</td>
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</table>

See footnotes at end of table.

S. Dept. 50-53
### PENDING INDIAN CLAIM CASES—DEC. 31, 1972

(Identification of symbols: The letter "x" indicates the case is in a consolidated status. The letter "s" indicates the case is in the post-trial decision stage. The letter "c" indicates that the case is submitted to the commission for its decision.)

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<tr>
<th>Docket No.</th>
<th>Affidavit of Title</th>
<th>Value</th>
<th>Amended</th>
<th>Others</th>
<th>Projected completion date</th>
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<td>Santa Clara</td>
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<td>December 1975</td>
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<tr>
<td>339-A</td>
<td>Seneca-Cayuga</td>
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<td>December 1975</td>
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<tr>
<td>340-A</td>
<td>Pueblo</td>
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<td></td>
<td></td>
<td>December 1975</td>
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</tbody>
</table>

**Notes:**
- See footnotes at end of table.
- See page 33 for additional cases.

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### PENDING INDIAN CLAIM CASES—DEC. 31, 1972

(Identification of symbols: The letter "x" indicates the case is in a consolidated status. The letter "s" indicates the case is in the post-trial decision stage. The letter "c" indicates that the case is submitted to the commission for its decision.)

<table>
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<tr>
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<th>Affidavit of Title</th>
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<th>Amended</th>
<th>Others</th>
<th>Projected completion date</th>
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**Notes:**
- See footnotes at end of table.
- See page 33 for additional cases.
Money awarded for past wrongs

State tribes among top suit winners

By BILL SAMPSON

Oklahoma Indians are among the leading tribes in winning monetary claims against the federal government for various wrongs of the past.

Last fiscal year, a combined claim of $3.5 million was filed in 1975, the first year for which figures are available. The commission, pertain to tribal lands and water rights, ceded, sold or lost to the federal government in the 19th century, usually under terms which amounted to duress and for prices the commission considers "unconscionable."

Most of the cases are difficult to prove because of scanty Indian records and evidence, and take years to issue. The Cherokee Outlet case, for example, was filed in 1948 and concluded in two parts in 1961 and 1972.

In the federal courts, the Cherokees, Chockies and Chickasaw were a 1959 U.S. Supreme Court decision awarding their title to the Arkansas River bed between Muskogee and Fort Smith, Ark. Earlier this year government attorneys appealed and it is worth $179 million, and the tribes are negotiating with Congress for payment.

In the second part of the Cherokee Outlet case decided by the commission in 1972, the tribe collected $14 million for the first part of the case decided in 1961.

These claims, the others before the commission, pertain to tribal lands and sometimes water rights ceded, sold or lost to the federal government in the 19th century, usually under terms which amounted to duress and for prices the commission considers "unconscionable."

The most recent annual report of the commission shows that through fiscal 1975, the cumulative total of awards has amounted to $601,110,457 since 1961. The total amount for these awards appropriated by Congress has been $30,841,384. Some award payments are pending and others were delayed by the various tribes and Congress for smaller amounts than recommended by the Indian Claims Commission.

There are still 175 cases pending before the commission. In 1977, Congress extended the authority of the commission through April 1977, with a provision that cases still pending at that time be transferred to the U.S. Court of Claims.

That court has advised Congress it does not welcome the proposed responsibility and is not adequately staffed or budgeted at present to take on the commission's work.

Following is a list of the various tribes which have won claims before the commission, their amounts, and the years in which they were won:

Cherokee, $2.5 million; Chickasaw, $922,000, both in 1941; Loyal Tract, $800,000 and email, $6.3 million; both in 1955; Chickasaw, $877,680, 1956; Omaha, $64,667; 1956; Shawnee, $74,000; 1956; Kansas, $190,000, 1956; Absentee Shawnee, $6.2 million; Miami of Oklahoma, $200,000; and Chickasaw, $64,000, in 1961.

Miami of Oklahoma, per capita share of $3.2 to Miami Indians in Oklahoma and Indiana, 1966.

Delawares and Absentee Shawnees, $9.1 million; Miami, $3.8 million; PoPawna Indians (Wea band), $1.5 million; Shawnee, $3.7 million; Sac and Fox, $10.5 million; PoPawna Indians (Plattsmouth band), $1.3 million, all in 1969.

Osage, $12.3 million; Sentic, $12.2 million; Delaware, $1.4 million; Creek, $5.0 million; Fort Sill Apaches, $20,736; Dakota, $1.8 million; Delaware, $420,875; Cherokees, $2.5 million, all in 1967.

Creek, $1 million; Creek, $2.7 million; Seneca, $2.4 million; Creek, $425,000, all in 1973.

Miami of Oklahoma, per capita share of $3.2 to Miami Indians in Oklahoma and Indiana, 1966.

Delawares and Absentee Shawnees, $9.1 million; Miami, $3.8 million; PoPawna Indians (Wea band), $1.5 million; Shawnee, $3.7 million; Sac and Fox, $10.5 million; PoPawna Indians (Plattsmouth band), $1.3 million, all in 1969.

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Creek, $1 million; Creek, $2.7 million; Seneca, $2.4 million; Creek, $425,000, all in 1973.
APR 14 19/6

SUPPORTERS CHEER — Supporters of Dennis Banks, American Indian Movement leader, surround him Tuesday as Banks (arm upraised) arrives at U.S. Courthouse in Portland for his arraignment on federal firearms charges. To right of Banks is his wife, KaMook, who carries one of their children. Banks pleaded not guilty.
INDIAN CLAIMS COMMISSION AUTHORIZATION, 1977

SEPTEMBER 27, 1976.—Ordered to be printed

Mr. Meeds, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 2981]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2981) to authorize appropriations for the Indian Claims Commission for fiscal year 1977, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate rescind from its disagreement to the amendment of the House and agree to the same with the following amendment:

In lieu of the matter proposed to be stricken by the House amendment, insert the following:

"That there is authorized to be appropriated to carry out the provisions of the Indian Claims Commission Act (25 U.S.C. 70), during fiscal year 1977, not to exceed $1,650,000.

Sec. 2. Section 23 of the Act entitled "An Act to create an Indian Claims Commission, to provide for the powers, duties, and functions thereof, and for other purposes", approved August 13, 1946 (60 Stat. 1015, 1055), as amended (86 Stat. 115; 25 U.S.C. 70v), is hereby amended by striking said section and inserting in lieu thereof the following:

"DISSOLUTION OF THE COMMISSION AND DISPOSITION OF PENDING CLAIMS"

"Sec. 23. The existence of the Commission shall terminate at the end of fiscal year 1978 on September 30, 1978, or at such earlier time as the Commission shall have made its final report to the Congress on all claims filed with it. Upon its dissolution, the records and files of the Commission in all cases in which a final determination has been entered shall be delivered to the Archivist of the United States. No later than December 31, 1976, the Indian Claims Commission may certify and transfer to the Court of Claims all cases which the Comm-"
mission determines it cannot completely adjudicate by September 30, 1978. In addition, the Commission may, at any time prior to September 30, 1978, certify and transfer to the Court of Claims any case which it determines cannot be completely adjudicated prior to the dissolution of the Commission. Jurisdiction is hereby conferred upon the Court of Claims to adjudicate all such cases under the provisions of section 2 of the Indian Claims Commission Act: Provided, That section 3 of said Act shall not apply to any cases filed originally in the Court of Claims under section 505 of title 28, United States Code. Upon dissolution of the Commission, all pending cases, including those which it has transferred pursuant to section 2 of this Act, as amended, shall remain to be completed by the Commission no later than December 31, 1976. The second is to extend the life of the Indian Claims Commission for one and one half years to September 30, 1980, in order to provide a sufficient period of time to complete its work. The Commission still has some unfinished cases to the Court of Claims. However, the full House voted in favor of an amendment offered by Mr. Meeds to strike the extension language. Thus, H.R. 11909 as passed on August 3, 1976, is a simple authorization bill.

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2081) authorizing appropriations for fiscal year 1977 for the Indian Claims Commission and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommened in the accompanying conference report:

The House amendment struck all those provisions after the authorizing section which extended the life of the Indian Claims Commission to September 30, 1980 and the Senate disagreed to the House amendment.

The committee of conference recommends that the Senate renege from its disagreement to the amendment of the House and agree to such amendment with an amendment. The differences between the Senate bill, the House amendment thereto, and the amendment to the House amendment agreed to in conference are noted below except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

S. 2081 as passed by the Senate on April 9, 1976, had two purposes. The first is to authorize an appropriation of $1,650,000 for fiscal year 1977. The second is to extend the life of the Commission by three and one half years to September 30, 1980 in order to provide a sufficient period of time to complete its work. The Commission still has some 140 cases pending final adjudication, most of which could be completed by 1980.

The House Interior and Insular Affairs Committee added an amendment to the House authorization bill (H.R. 11909) which would have extended the life of the Indian Claims Commission to September 30, 1980. The House Committee amendments also included procedures for an orderly transfer of unfinished cases to the Court of Claims. However, the full House voted in favor of an amendment offered by Mr. Meeds to strike the extension language. Thus, H.R. 11909 as passed on August 3, 1976, is a simple authorization bill.

The conferees agreed to accept a compromise that would extend the life of the Commission for one and one half years until September 30, 1978. Additionally, the conferees agreed to the following provisions:

1. All cases which the Commission determined it could not complete by September 30, 1978, would be transferred to the Commission no later than December 31, 1976.

2. All cases remaining under the jurisdiction of the Commission, but which are incomplete on September 30, 1978, would
be transferred on that date to the Court of Claims for completion, pursuant to the existing language of the Act.

(3) The Commission is required to report to the Committees on Interior and Insular Affairs of the Senate and House of Representatives on the first day of the 95th Congress those cases which it transferred to the Court of Claims by December 31, 1976. It is further required to make semi-annual reports thereafter on its progress on remaining cases.

The committee of conference firmly intends that the Indian Claims Commission shall transfer by December 31, 1976, all cases of an accounting nature in which no proceedings have been initiated. Additionally, it firmly expects that all other cases which the Commission determines that it cannot completely adjudicate by September 30, 1978 shall also be transferred by December 31, 1976.

The Committee of Conference is adamantly opposed to any further extensions of the Commission beyond the September 30, 1978 dissolution date. Therefore, all those cases which cannot be completed by that date should be transferred by the Indian Claims Commission to the Court of Claims.

Roy A. Taylor,
Lloyd Meeds,
Robert G. Stephens, Jr.,
Theodore M. Risenhoover,
James P. Johnson,
Managers on the Part of the House.

Henry M. Jackson,
Lee Metcalf,
J. Bennett Johnston,
James Abourezk,
Paul J. Fannin,
Dewey F. Bartlett,
Managers on the Part of the Senate.
MEMORANDUM

Date: October 2
FOR ACTION: Brad Patterson
Max Friedersdorf
Bobbie Kilberg

cc (for information): Jack Marsh
Jim Connor
Ed Schults

FROM THE STAFF SECRETARY

DUE: Date: October 4
SUBJECT:
S.2981—Appropriation Authorization for Indian Claims Commission for FY 77

ACTION REQUESTED:
____ For Necessary Action  ____ For Your Recommendations
____ Prepare Agenda and Brief  ____ Draft Reply
____x For Your Comments  ____ Draft Remarks

REMARKS:
please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. 

[Signature]
For the President
MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2981 - Appropriation authorization for the Indian Claims Commission for fiscal year 1977

Last Day for Action
October 12, 1976 - Tuesday

Action on this enrolled bill is necessary as soon as possible so that a fiscal year 1977 contingent appropriation for this program can be apportioned.

Purpose

Authorizes appropriations in the amount of $1,650,000 for the Indian Claims Commission for fiscal year 1977 and extends the life of the Commission through September 30, 1978.

Agency Recommendations
Office of Management and Budget Approval
Indian Claims Commission Approval

Discussion

Under the Indian Claims Commission Act, the Commission was created in 1946 to adjudicate claims involving Native American Indian rights to land and compensation to Indians for the value of their aboriginal claims to land. Under current law, the Commission’s life would terminate during fiscal year 1977, but earlier this year, the Administration proposed an extension through fiscal year 1978 to permit the Commission to complete most, if not all, of its remaining work.
S. 2981 would authorize appropriations of $1,650,000 for the Indian Claims Commission for fiscal year 1977 and extend the life of the Commission through the end of fiscal year 1978, or at such earlier time as the Commission shall have made its final report to the Congress on all claims filed with it.

The enrolled bill would also require that upon dissolution, the Commission shall deliver to the Archivist of the United States all case records and files in which a final determination has been entered, and by December 31, 1976, transfer to the U.S. Court of Claims all cases which it has determined cannot be completely adjudicated by September 30, 1978. S. 2981 directs the Commission to file a report to the Congress on the first day of the next session on those cases which it transferred to the Archives and the Court of Claims and at six-month intervals thereafter on the status of its remaining work.

The Congress has already passed an appropriation of $1,525 million for fiscal year 1977, contingent upon enactment of this authorizing legislation.

Other than certain technical provisions concerning reports to the Congress and the means for transferring cases to the Court of Claims, S. 2981 as enrolled represents the Administration's proposal submitted during 1976 to the Congress.

Acting Director

Enclosures
September 30, 1976

Honorable James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Re: Enrolled Bill S. 2981

Dear Mr. Frey:

This is in response to your request of this date regarding enrolled bill S. 2981, an act "To authorize appropriations for the Indian Claims Commission for fiscal year 1977."

The Indian Claims Commission recommends enrolled bill S. 2981 for the President's signature.

Sincerely yours,

[Signature]

Jerome K. Kuykendall
Chairman
THE WHITE HOUSE
WASHINGTON

October 4, 1976

NOTE TO THE STAFF SECRETARY

I concur that S 2561 and S 3651 should be signed by the President.

Bradley H. Patterson, Jr.