

105TH CONGRESS
2D SESSION

S. 391

AN ACT

To provide for the disposition of certain funds appropriated to pay judgment in favor of the Mississippi Sioux Indians, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mississippi Sioux
5 Tribes Judgment Fund Distribution Act of 1998”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) COVERED INDIAN TRIBE.—The term “cov-
4 ered Indian tribe” means an Indian tribe listed in
5 section 4(a).

6 (2) FUND ACCOUNT.—The term “Fund Ac-
7 count” means the consolidated account for tribal
8 trust funds in the Treasury of the United States
9 that is managed by the Secretary—

10 (A) through the Office of Trust Fund
11 Management of the Department of the Interior;
12 and

13 (B) in accordance with the American In-
14 dian Trust Fund Management Reform Act of
15 1994 (25 U.S.C. 4001 et seq.).

16 (3) SECRETARY.—The term “Secretary” means
17 the Secretary of the Interior.

18 (4) TRIBAL GOVERNING BODY.—The term
19 “tribal governing body” means the duly elected gov-
20 erning body of a covered Indian tribe.

21 **SEC. 3. DISTRIBUTION TO, AND USE OF CERTAIN FUNDS BY,**
22 **THE SISSETON AND WAHPETON TRIBES OF**
23 **SIOUX INDIANS.**

24 Notwithstanding any other provision of law, including
25 Public Law 92–555 (25 U.S.C. 1300d et seq.), any funds
26 made available by appropriations under chapter II of Pub-

1 lie Law 90–352 (82 Stat. 239) to the Sisseton and
 2 Wahpeton Tribes of Sioux Indians to pay a judgment in
 3 favor of those Indian tribes in Indian Claims Commission
 4 dockets numbered 142 and 359, including interest, that,
 5 as of the date of enactment of this Act, have not been
 6 distributed, shall be distributed and used in accordance
 7 with this Act.

8 **SEC. 4. DISTRIBUTION OF FUNDS TO TRIBES.**

9 (a) IN GENERAL.—

10 (1) AMOUNT DISTRIBUTED.—

11 (A) IN GENERAL.—Subject to section 8(e)
 12 and if no action is filed in a timely manner (as
 13 determined under section 8(d)) raising any
 14 claim identified in section 8(a), not earlier than
 15 365 days after the date of enactment of this
 16 Act and not later than 415 days after the date
 17 of enactment of this Act, the Secretary shall
 18 transfer to the Fund Account to be credited to
 19 accounts established in the Fund Account for
 20 the benefit of the applicable governing bodies
 21 under paragraph (2) an aggregate amount de-
 22 termined under subparagraph (B).

23 (B) AGGREGATE AMOUNT.—The aggregate
 24 amount referred to in subparagraph (A) is an
 25 amount equal to the remainder of—

- 1 (i) the funds described in section 3;
 2 minus
 3 (ii) an amount equal to 71.6005 per-
 4 cent of the funds described in section 3.

5 (2) DISTRIBUTION OF FUNDS TO ACCOUNTS IN
 6 THE FUND ACCOUNT.—The Secretary shall ensure
 7 that the aggregate amount transferred under para-
 8 graph (1) is allocated to the accounts established in
 9 the Fund Account as follows:

10 (A) 28.9276 percent of that amount shall
 11 be allocated to the account established for the
 12 benefit of the tribal governing body of the Spir-
 13 it Lake Tribe of North Dakota.

14 (B) 57.3145 percent of that amount, after
 15 payment of any applicable attorneys' fees and
 16 expenses by the Secretary under the contract
 17 numbered A00C14202991, approved by the
 18 Secretary on August 16, 1988, shall be allo-
 19 cated to the account established for the benefit
 20 of the tribal governing body of the Sisseton and
 21 Wahpeton Sioux Tribe of South Dakota.

22 (C) 13.7579 percent of that amount shall
 23 be allocated to the account established for the
 24 benefit of the tribal governing body of the As-
 25 siniboine and Sioux Tribes of the Fort Peck

1 Reservation in Montana, as designated under
2 subsection (c).

3 (b) USE.—Amounts distributed under this section to
4 accounts referred to in subsection (d) for the benefit of
5 a tribal governing body shall be distributed and used in
6 a manner consistent with section 5.

7 (c) TRIBAL GOVERNING BODY OF ASSINIBOINE AND
8 SIOUX TRIBES OF FORT PECK RESERVATION.—For pur-
9 poses of making distributions of funds pursuant to this
10 Act, the Sisseton and Wahpeton Sioux Council of the As-
11 siniboine and Sioux Tribes shall act as the governing body
12 of the Assiniboine and Sioux Tribes of the Fort Peck Res-
13 ervation.

14 (d) TRIBAL TRUST FUND ACCOUNTS.—The Sec-
15 retary of the Treasury, in cooperation with the Secretary
16 of the Interior, acting through the Office of Trust Fund
17 Management of the Department of the Interior, shall en-
18 sure that such accounts as are necessary are established
19 in the Fund Account to provide for the distribution of
20 funds under subsection (a)(2).

21 **SEC. 5. USE OF DISTRIBUTED FUNDS.**

22 (a) PROHIBITION.—No funds allocated for a covered
23 Indian tribe under section 4 may be used to make per cap-
24 ita payments to members of the covered Indian tribe.

1 (b) PURPOSES.—The funds allocated under section 4
2 may be used, administered, and managed by a tribal gov-
3 erning body referred to in section 4(a)(2) only for the pur-
4 pose of making investments or expenditures that the tribal
5 governing body determines to be reasonably related to—

6 (1) economic development that is beneficial to
7 the covered Indian tribe;

8 (2) the development of resources of the covered
9 Indian tribe;

10 (3) the development of programs that are bene-
11 ficial to members of the covered Indian tribe, includ-
12 ing educational and social welfare programs;

13 (4) the payment of any existing obligation or
14 debt (existing as of the date of the distribution of
15 the funds) arising out of any activity referred to in
16 paragraph (1), (2), or (3);

17 (5)(A) the payment of attorneys' fees or ex-
18 penses of any covered Indian tribe referred to in
19 subparagraph (A) or (C) of section 4(a)(2) for litiga-
20 tion or other representation for matters arising out
21 of the enactment of Public Law 92–555 (25 U.S.C.
22 1300d et seq.); except that

23 (B) the amount of attorneys' fees paid by a cov-
24 ered Indian tribe under this paragraph with funds
25 distributed under section 4 shall not exceed 10 per-

1 cent of the amount distributed to that Indian tribe
2 under that section;

3 (6) the payment of attorneys' fees or expenses
4 of the covered Indian tribe referred to in section
5 4(a)(2)(B) for litigation and other representation for
6 matters arising out of the enactment of Public Law
7 92–555 (25 U.S.C. 1300d et seq.), in accordance, as
8 applicable, with the contracts numbered
9 A00C14203382 and A00C14202991, that the Sec-
10 retary approved on February 10, 1978 and August
11 16, 1988, respectively; or

12 (7) the payment of attorneys' fees or expenses
13 of any covered Indian tribe referred to in section
14 4(a)(2) for litigation or other representation with re-
15 spect to matters arising out of this Act.

16 (c) MANAGEMENT.—Subject to subsections (a), (b),
17 and (d), any funds distributed to a covered Indian tribe
18 pursuant to sections 4 and 7 may be managed and in-
19 vested by that Indian tribe pursuant to the American In-
20 dian Trust Fund Management Reform Act of 1994 (25
21 U.S.C. 4001 et seq.).

22 (d) WITHDRAWAL OF FUNDS BY COVERED
23 TRIBES.—

24 (1) IN GENERAL.—Subject to paragraph (2),
25 each covered Indian tribe may, at the discretion of

1 that Indian tribe, withdraw all or any portion of the
 2 funds distributed to the Indian tribe under sections
 3 4 and 7 in accordance with the American Indian
 4 Trust Fund Management Reform Act (25 U.S.C.
 5 4001 et seq.).

6 (2) EXEMPTION.—For purposes of paragraph
 7 (1), the requirements under subsections (a) and (b)
 8 of section 202 of the American Indian Trust Fund
 9 Management Reform Act (25 U.S.C. 4022 (a) and
 10 (b)) and section 203 of such Act (25 U.S.C. 4023)
 11 shall not apply to a covered Indian tribe or the Sec-
 12 retary.

13 (3) RULE OF CONSTRUCTION.—Nothing in
 14 paragraph (2) may be construed to limit the applica-
 15 bility of section 202(c) of the American Indian Trust
 16 Fund Management Reform Act (25 U.S.C. 4022(c)).

17 **SEC. 6. EFFECT OF PAYMENTS TO COVERED INDIAN**
 18 **TRIBES ON BENEFITS.**

19 (a) IN GENERAL.—A payment made to a covered In-
 20 dian tribe or an individual under this Act shall not—

21 (1) for purposes of determining the eligibility
 22 for a Federal service or program of a covered Indian
 23 tribe, household, or individual, be treated as income
 24 or resources; or

1 (2) otherwise result in the reduction or denial
2 of any service or program to which, pursuant to
3 Federal law (including the Social Security Act (42
4 U.S.C. 301 et seq.)), the covered Indian tribe,
5 household, or individual would otherwise be entitled.

6 (b) APPLICABILITY.—Section 304 of Public Law 92–
7 555 (25 U.S.C. 1300d–8) shall apply to any funds distrib-
8 uted under this Act.

9 **SEC. 7. DISTRIBUTION OF FUNDS TO LINEAL DESCEND-**
10 **ANTS.**

11 (a) IN GENERAL.—Subject to section 8(e), the Sec-
12 retary shall, in the manner prescribed in section 202(c)
13 of Public Law 92–555 (25 U.S.C. 1300d–4(c)), distribute
14 to the lineal descendants of the Sisseton and Wahpeton
15 Tribes of Sioux Indians an amount equal to 71.6005 per-
16 cent of the funds described in section 3, subject to any
17 reduction determined under subsection (b).

18 (b) ADJUSTMENTS.—

19 (1) IN GENERAL.—Subject to section 8(e), if
20 the number of individuals on the final roll of lineal
21 descendants certified by the Secretary under section
22 201(b) of Public Law 92–555 (25 U.S.C. 1300d–
23 3(b)) is less than 2,588, the Secretary shall distrib-
24 ute a reduced aggregate amount to the lineal de-

1 scendants referred to in subsection (a), determined
 2 by decreasing—

3 (A) the percentage specified in section
 4 4(a)(B)(ii) by a percentage amount equal to—

5 (i) .0277; multiplied by

6 (ii) the difference between 2,588 and
 7 the number of lineal descendants on the
 8 final roll of lineal descendants, but not to
 9 exceed 600; and

10 (B) the percentage specified in subsection
 11 (a) by the percentage amount determined under
 12 subparagraph (A).

13 (2) DISTRIBUTION.—If a reduction in the
 14 amount that otherwise would be distributed under
 15 subsection (a) is made under paragraph (1), an
 16 amount equal to that reduction shall be added to the
 17 amount available for distribution under section
 18 4(a)(1), for distribution in accordance with section
 19 4(a)(2).

20 (c) VERIFICATION OF ANCESTRY.—In seeking to ver-
 21 ify the Sisseton and Wahpeton Mississippi Sioux Tribe an-
 22 cestry of any person applying for enrollment on the roll
 23 of lineal descendants after January 1, 1998, the Secretary
 24 shall certify that each individual enrolled as a lineal de-
 25 scendant can trace ancestry to a specific Sisseton or

1 Wahpeton Mississippi Sioux Tribe lineal ancestor who was
2 listed on—

3 (1) the 1909 Sisseton and Wahpeton annuity
4 roll;

5 (2) the list of Sisseton and Wahpeton Sioux
6 prisoners convicted for participating in the outbreak
7 referred to as the “1862 Minnesota Outbreak”;

8 (3) the list of Sioux scouts, soldiers, and heirs
9 identified as Sisseton and Wahpeton Sioux on the
10 roll prepared pursuant to the Act of March 3, 1891
11 (26 Stat. 989 et seq., chapter 543); or

12 (4) any other Sisseton or Wahpeton payment or
13 census roll that preceded a roll referred to in para-
14 graph (1), (2), or (3).

15 (d) CONFORMING AMENDMENTS.—

16 (1) IN GENERAL.—Section 202(a) of Public
17 Law 92–555 (25 U.S.C. 1300d–4(a)) is amended—

18 (A) in the matter preceding the table—

19 (i) by striking “, plus accrued inter-
20 est,”; and

21 (ii) by inserting “plus interest re-
22 ceived (other than funds otherwise distrib-
23 uted to the Sisseton and Wahpeton Tribes
24 of Sioux Indians in accordance with the
25 Mississippi Sioux Tribes Judgment Fund

1 Distribution Act of 1998),” after “docket
2 numbered 359,”; and

3 (B) in the table contained in that sub-
4 section, by striking the item relating to “All
5 other Sisseton and Wahpeton Sioux”.

6 (2) ROLL.—Section 201(b) of Public Law 92–
7 555 (25 U.S.C. 1300d–3(b)) is amended by striking
8 “The Secretary” and inserting “Subject to the Mis-
9 sissippi Sioux Tribes Judgment Fund Distribution
10 Act of 1998, the Secretary”.

11 **SEC. 8. JURISDICTION; PROCEDURE.**

12 (a) ACTIONS AUTHORIZED.—In any action brought
13 by or on behalf of a lineal descendant or any group or
14 combination of those lineal descendants to challenge the
15 constitutionality or validity of distributions under this Act
16 to any covered Indian tribe, any covered Indian tribe, sep-
17 arately, or jointly with another covered Indian tribe, shall
18 have the right to intervene in that action to—

19 (1) defend the validity of those distributions; or

20 (2) assert any constitutional or other claim
21 challenging the distributions made to lineal descend-
22 ants under this Act.

23 (b) JURISDICTION AND VENUE.—

24 (1) EXCLUSIVE ORIGINAL JURISDICTION.—Sub-
25 ject to paragraph (2), only the United States Dis-

1 trict Court for the District of Columbia, and for the
2 districts in North Dakota and South Dakota, shall
3 have original jurisdiction over any action brought to
4 contest the constitutionality or validity under law of
5 the distributions authorized under this Act.

6 (2) CONSOLIDATION OF ACTIONS.—After the
7 filing of a first action under subsection (a), all other
8 actions subsequently filed under that subsection
9 shall be consolidated with that first action.

10 (3) JURISDICTION BY THE UNITED STATES
11 COURT OF FEDERAL CLAIMS.—If appropriate, the
12 United States Court of Federal Claims shall have ju-
13 risdiction over an action referred to in subsection
14 (a).

15 (c) NOTICE TO COVERED TRIBES.—In an action
16 brought under this section, not later than 30 days after
17 the service of a summons and complaint on the Secretary
18 that raises a claim identified in subsection (a), the Sec-
19 retary shall send a copy of that summons and complaint,
20 together with any responsive pleading, to each covered In-
21 dian tribe by certified mail with return receipt requested.

22 (d) STATUTE OF LIMITATIONS.—No action raising a
23 claim referred to in subsection (a) may be filed after the
24 date that is 365 days after the date of enactment of this
25 Act.

1 (e) SPECIAL RULE.—

2 (1) FINAL JUDGMENT FOR LINEAL DESCEND-
3 ANTS.—

4 (A) IN GENERAL.—If an action that raises
5 a claim referred to in subsection (a) is brought,
6 and a final judgment is entered in favor of 1
7 or more lineal descendants referred to in that
8 subsection, section 4(a) and subsections (a) and
9 (b) of section 7 shall not apply to the distribu-
10 tion of the funds described in subparagraph
11 (B).

12 (B) DISTRIBUTION OF FUNDS.—Upon the
13 issuance of a final judgment referred to in sub-
14 paragraph (A) the Secretary shall distribute
15 100 percent of the funds described in section 3
16 to the lineal descendants in a manner consistent
17 with—

18 (i) section 202(c) of Public Law 92–
19 555 (25 U.S.C. 1300d–4(c)); and

20 (ii) section 202(a) of Public Law 92–
21 555, as in effect on the day before the date
22 of enactment of this Act.

23 (2) FINAL JUDGMENT FOR COVERED INDIAN
24 TRIBES.—

1 (A) IN GENERAL.—If an action that raises
2 a claim referred to in subsection (a) is brought,
3 and a final judgment is entered in favor of 1
4 or more covered Indian tribes that invalidates
5 the distributions made under this Act to lineal
6 descendants, section 4(a), other than the per-
7 centages under section 4(a)(2), and subsections
8 (a) and (b) of section 7 shall not apply.

9 (B) DISTRIBUTION OF FUNDS.—Not later
10 than 180 days after the date of the issuance of
11 a final judgment referred to in subparagraph
12 (A), the Secretary shall distribute 100 percent
13 of the funds described in section 3 to each cov-
14 ered Indian tribe in accordance with the judg-
15 ment and the percentages for distribution con-
16 tained in section 4(a)(2).

17 (f) LIMITATION ON CLAIMS BY A COVERED INDIAN
18 TRIBE.—

19 (1) IN GENERAL.—If any covered Indian tribe
20 receives any portion of the aggregate amounts trans-
21 ferred by the Secretary to a Fund Account or any
22 other account under section 4, no action may be
23 brought by that covered Indian tribe in any court for
24 a claim arising from the distribution of funds under
25 Public Law 92–555 (25 U.S.C. 1300d et seq.).

1 (2) RULE OF CONSTRUCTION.—Nothing in this
2 subsection shall be construed to limit the right of a
3 covered Indian tribe to—

4 (A) intervene in an action that raises a
5 claim referred to in subsection (a); or

6 (B) limit the jurisdiction of any court re-
7 ferred to in subsection (b), to hear and deter-
8 mine any such claims.

 Passed the Senate October 9 (legislative day, Octo-
ber 2), 1998.

Attest:

Secretary.

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