Calendar No. 489

118TH CONGRESS, 2d Session | SENATE | REPORT 118–211

A BILL TO PROVIDE FOR THE EQUITABLE SETTLEMENT OF CERTAIN INDIAN LAND DISPUTES REGARDING LAND IN ILLINOIS, AND FOR OTHER PURPOSES

SEPTEMBER 9, 2024.—Ordered to be printed

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

REPORT

[To accompany S. 2796]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 2796), to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, and for other purposes, having considered the same, reports favorably thereon without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of S. 2796 is to authorize the United States Court of Federal Claims to consider treaty-based land claims of the Miami Tribe of Oklahoma and to extinguish any future claims to those lands by the Tribe and its members.

BACKGROUND AND NEED

The Miami Tribe of Oklahoma is a federally-recognized Indian Tribe whose ancestral homelands are located in present-day Indiana, Illinois, and Ohio.[1] In 1805, the Miami Tribe, and several of its component bands, signed the Treaty of Grouseland with the United States. The Treaty relinquished title to the Tribe's lands in southeastern Illinois and reserved lands for the Tribe in the Wabash River watershed in east-central Illinois.[2] Under terms of the

[1] In 1846, the United States forcibly removed the Miami Tribe to present-day Kansas; it was removed again by force in 1867 to present-day Oklahoma, where the Tribe's seat of government is currently located.

[2] 7 Stat. 91 (1805). *See* Letter to Senator Brian Schatz, Chairman, U.S. Senate Committee on Indian Affairs, from Douglas G. Lankford, Chief, Miami Tribe of Oklahoma (January 16, 2024) (on file with the Committee).

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Treaty, the United States agreed that it would not take any part of the reserved lands without consent of the Miami Tribe or the other Tribal signatories.[3]

Through a series of additional treaties executed between 1805 and 1840, the Tribe ceded all but 2.6 million acres of the lands that it reserved under the Treaty of Grouseland.[4] Beginning in 1821 and continuing throughout the 19th century, the United States sold parcels of the reserved lands without consent of, or compensation to, the Tribe. In 2000, the Tribe filed a treaty-based takings claim against the United States, alleging that the United States did not transfer the reserved lands with clear title, resulting in clouded title for current landowners.[5]

SUMMARY OF S. 2796 AS ORDERED REPORTED

S. 2796 grants the United States Court of Federal Claims jurisdiction to decide a takings claim by the Miami Tribe of Oklahoma arising under its 1805 Treaty of Grouseland with the United States; provides one-year for the Tribe to file its claim with the Court; and extinguishes any and all future claims by the Tribe, its members, descendants, or predecessors in interest to lands in Illinois.

SECTION-BY-SECTION ANALYSIS OF S. 2796 AS ORDERED REPORTED

Section 1. Settlement of claims

Section 1(a)(1) authorizes the United States Court of Federal Claims to hear, determine, and render judgement on a land claim of the Miami Tribe of Oklahoma under its 1805 Treaty with the United States.

Section 1(a)(2) clarifies the Miami Tribe of Oklahoma has one year, after the date of enactment of the Act, to file a claim with the United States Court of Federal Claims based on its 1805 Treaty.

Section 1(b) clarifies that except for a claim made under Section 1(a)(1), any and all future claims by the Tribe, its members, descendants, or predecessors in interest to lands in Illinois are extinguished.

LEGISLATIVE HISTORY

Senator Mullin (R–OK) introduced S. 2796 on September 13, 2023. On the same day, the Senate referred the bill to the Committee on Indian Affairs. On February 8, 2024, the Committee held a legislative hearing to receive testimony on the bill. On May 1, 2024, the Committee met at a duly convened business meeting and ordered S. 2796 reported favorably, without amendment, by voice vote.

On September 29, 2023, Representative Cole (R–OK) introduced an identical bill, H.R. 5831, in the House of Representatives. On the same day, the bill was referred to the House Committee on

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[3] 7 Stat. 91, Art. IV.

[4] *See*, Treaty of September 30, 1809 (7 Stat. 13); Treaty of September 30, 1809 (7 Stat. 115); Treaty of October 6, 1818 (7 Stat. 189); Treaty of October 26, 1826 (7 Stat. 300); Treaty of February 11, 1828 (7 Stat. 309); October 23, 1834 (7 Stat. 458, 463); Treaty of November 6, 1838 (7 Stat. 569); and Treaty of November 28, 1840 (7 Stat. 582).

[5] Litigation is ongoing and unresolved. *Miami Tribe of Oklahoma* v. *Walden, et al.*, Case No. 4:00-cv-041420JPG (S.D. Il.) (filed on June 2, 2000).

Natural Resources. To date, the House has taken no further action on H.R. 5831.

COST AND BUDGETARY CONSIDERATIONS

S. 2796, a bill to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, and for other purposes
As ordered reported by the Senate Committee on Indian Affairs on May 1, 2024

By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	*	*
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	No

* = between -$500,000 and $500,000.

S. 2796 would grant jurisdiction to the U.S. Court of Federal Claims for the Miami Tribe of Oklahoma's land claim against the United States arising from the Treaty of Grouseland. The bill would require the court to render judgement without regard to the statute of limitations or any other delay-based defense. The bill also would extinguish all other claims, including any future claims, of the tribe to land in Illinois.

Groups that file civil suits in the U.S. Court of Federal Claims pay filing and administrative fees, which are recorded as revenues. Those fees can be spent without further appropriation to cover the administrative costs of the judiciary. On that basis, CBO estimates that enacting S. 2796 would increase both revenues and direct spending by an insignificant amount over the 2024–2034 period.

CBO also expects that both the court and the Department of the Interior would incur additional administrative costs to implement S. 2796. Based on the costs of similar activities, CBO estimates that those costs would be insignificant; any related spending would be subject to the availability of appropriated funds.

S. 2796 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would extinguish the tribe's claims to land in Illinois. Eliminating an existing right of action is a mandate because the right to seek redress and recover damages beyond what is provided in the bill would be lost. CBO estimates that the cost of the mandate would not exceed the annual threshold established in UMRA ($100 million in 2024, adjusted annually for inflation).

S. 2796 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Julia Aman (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2796 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE TESTIMONY

Written statement of Kathryn Isom-Clause, Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs, U.S. Department of the Interior, before the U.S. Senate Committee on Indian Affairs, February 8, 2024, follows below:

> Good morning, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Kathryn Isom-Clause and I am the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on . . . S. 2796, A bill to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, and for other purposes . . . S. 2796 would confer jurisdiction to the United States Court of Federal Claims to hear, determine, and render judgment regarding the Miami Tribe of Oklahoma's land claims under the Treaty of Grouseland (7 Stat. 91), signed August 21, 1805, and would remove legal or equitable defenses based on the passage of time, including the statute of limitations. The jurisdiction conferred to the United States Court of Federal Claims expires unless a claim is filed under paragraph (1) of S. 2796 by the Miami Tribe of Oklahoma within one year of enactment of this legislation. The bill extinguishes all other claims to title of the Miami Tribe of Oklahoma, or any member, descendant, or predecessor in interest to the Miami Tribe of Oklahoma to land in the State of Illinois.
>
> The Department needs to better understand the claims by the Miami Tribe of Oklahoma and the impacts of this legislation on those claims and any remedy sought by the Tribe. The Department therefore takes no position on the legislation at this time.

The Committee notes that while the Department did not take a position on S. 2796 at the February 8, 2024 hearing, the Department subsequently informed the Committee that it supports the legislation after review of the Tribe's claims, the impacts of S. 2796 on those claims, and any remedy sought by the Tribe.[6]

[6] Letter to the Honorable Brian Schatz, Chairman, U.S. Senate Committee on Indian Affairs, from Bryan Newland, Assistant Secretary—Indian Affairs, U.S. Department of the Interior (Apr. 22, 2024) (in the hearing record and on file with the Committee).

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 2796.

CHANGES IN EXISTING LAW

On February 9, 2023, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.