

AMENDING THE STATUTE OF LIMITATIONS PROVISIONS IN SECTION 2415 OF TITLE 28, UNITED STATES CODE, RELATING TO CLAIMS BY THE UNITED STATES ON BEHALF OF INDIANS

JUNE 1, 1977.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DANFELSON, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 5023]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5023) to amend the statute of limitations provisions in section 2415 of title 28, United States Code, relating to claims by the United States on behalf of Indians having considered the same, report favorably thereon with amendments and recommend that the bill do pass. The amendments are as follows:

Page 1, line 5: Strike "eleven years" and insert "more than eleven years after the right of action accrued".

Page 1, lines 5 and 6: Strike "twenty one years" and insert "after December 31, 1981".

Page 1, lines 8 and 9: Strike "eleven years" and insert "within eleven years after the right of action accrues".

Page 1, lines 9 and 10: Strike "twenty one years" and insert "on or before December 31, 1981".

Purpose

The purpose of the proposed legislation, as amended, is to amend section 2415 of title 28, United States Code, to extend to December 31, 1981, the time for the United States to file tort or contract actions in behalf of Indians which accrued prior to July 18, 1966.

STATEMENT

The Department of the Interior in its report to the committee on the bill recommended the enactment of the bill as amended by the committee. The Department of Justice also recommends the enactment of the amended bill.

On July 18, 1966, section 2415 of title 28 was enacted into law and it for the first time imposed a statute of limitations on tort or contract suits brought by the United States. The statute of limitations also applied to actions brought by the United States as Trustee for Indians. In 1972, the Congress extended the limitations period to July 18, 1977 for actions for monetary damages brought by the United States in behalf of Indians.

Because of the difficulties in identifying and processing these claims, the Department of the Interior has recommended that the statute of limitations be extended until December 31, 1981 for this specific group of claims. The committee amendment would extend the limitation period to December 31, 1981 as recommended by the Department.

The Office of the Solicitor of the Department of the Interior estimates that there could be many pre-1966 claims as yet unidentified or still being asserted that now would have to be filed by July 18, 1977. The major wide the unprocessed cases could amount to well over 1,000. The major reason why the previous 5-year extension was insufficient is that many tribes have only become aware of their tort and contract remedies in the last few years and thus have not, until recently, had adequate procedures to document claims. Therefore, hundreds of the pre-1966 claims are still being researched and identified and cannot all be filed by July 1977.

In testimony before the Senate Select Committee on Indian Affairs Mr. Leo H. Krulitz, Solicitor of the Department of the Interior stated that serious concern has been expressed by Indian representations that the expiration of the present statute of limitations on July 18, 1977 could bar them from recovering damages in numerous causes that arose before 1966 because many of their claims may not be processed before the statute of limitations runs out. Accordingly, in behalf of the Department, the Solicitor recommended that the statute of limitations in 28 U.S.C. 2415 be extended until December 31, 1981 for claims brought by the United States on the behalf of Indians where the cause of action arose prior to 1966.

In 1972, when this committee reported the bill H.R. 13825 providing for the previous extension for commencing actions on behalf of Indian tribes, bands, or groups (House Report No. 92-1267, 92d Congress, 2d Session), it was observed that the claims which accrued prior to July 18, 1966 include a number of very complicated matters, and further that the identification of the claims and the development of their factual and legal basis were difficult.

In its report on the present bill the Interior Department stated that the 5-year extension granted in 1972 did not solve the problem. The Department advised the committee that it found it difficult to estimate the number which remain unprocessed. As an example, the Department's Field Solicitor's Office in Phoenix, Ariz., has developed approximately 35 claims in their geographical area which they will attempt to process by July 18, 1977. The Twin Cities' Field Solicitor's Office, covering Minnesota, Iowa and Wisconsin, has developed 167 cases. The Office of the Solicitor estimates that there could be many pre-1966 claims as yet unidentified or still being asserted that would have to be filed by July 18, 1977. Nationwide the unprocessed cases could amount to well over 1,000. As has been noted, a major reason why the 5-year extension was insufficient is that many tribes have only become

accordance with subsection (g) may be brought within eleven years after the right of action accrues. *on or before December 31, 1981.*

(c) Nothing herein shall be deemed to limit the time for bringing an action to establish the title to, or right of possession of, real or personal property.

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the recovery of money erroneously paid to or on behalf of any civilian employee of an agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee or member, shall be barred unless the complaint is filed within six years after the right of action accrues: *Provided*, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, regardless of whether the action would otherwise then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act shall, for purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) Nothing in this Act shall apply to actions brought under the Internal Revenue Code or incidental to the collection of taxes imposed by the United States.

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aware of their tort and contract remedies in the last few years and thus have not, until recently, had adequate procedures to document claims as they arose. Therefore, hundreds of the pre-1966 claims are still being researched and identified and cannot all be filed by July 1977. In testimony before the Senate on a bill similar to H.R. 5023, the Interior Department witness further noted the tort and contract remedies which are involved in this particular group of claims have become better defined by the courts in the last few years. The Department witness further stated that the Department of the Interior had not, until recently, had adequate procedures to document claims as they arose. Therefore, hundreds of the pre-1966 claims are still being researched and identified and cannot all be filed by July 1977.

The Department of Justice in its report to this committee and also in a statement submitted at the May 3, 1977 hearings stated that it supports an amendment of the statute of limitations to extend the time in which the United States can bring actions on behalf of Indian tribes for claims accruing prior to July 18, 1966.

The Justice Department sues on behalf of Indian tribes only at the request of the Solicitor of the Department of the Interior. The Justice Department has pointed out that while a few of the matters already referred to it by Interior might be affected if the current July 18, 1977 limit in the present statute were not changed, the greater problem is with those claims which have not yet been unearthed by the Department of the Interior or which have not been investigated to the extent that they can be referred to the Justice Department for litigation.

The conclusion of the Department of Justice is that an extension of the statute until December 31, 1981, when coupled with an effort by the Department of the Interior to find and investigate these claims, would be a fitting and appropriate action in view of the Government's traditional role of guardian and trustee for the Indian.

In testimony before the Senate Select Committee, there was a discussion of a number of matters now pending in the Department of Justice which could be affected by an expiration of the statute of limitations. These include the claims of the Maine Passamaquoddy and Penobscot Indian violations of the Indian Trade and Intercourse Act. Information submitted to the Subcommittee on Administrative Law and Governmental Relations in connection with its consideration of H.R. 5023 referred to the problems which could arise if the Government were requested to file a suit covering these particular claims in order of meet the July 18, 1977 deadline.

At a hearing before the Senate Select Committee on Indian Affairs on May 12, 1977, the Governor of Maine, the Honorable James B. Long and the Honorable Joseph E. Brennan, attorney general of the State of Maine testified concerning the complexities of the Maine litigation. Attorney General Brennan stated that the position of the State of Maine is that an extension of the statute would offer more opportunity to find a possible solution to the matter without litigation. He, too, noted that the present deadline of July 18, 1977 is so close that without an extension, a protective lawsuit, with all the problems it could create may be unavoidable.

In its report to the committee on the bill, the Department of Justice referred to the relationship of this bill to the claims by the Indians

of the State of Maine and indicated that the passage of the bill would obviate a need for a special bill to deal with the limitations problem as to those particular claims. In this connection, the Department of Justice stated:

The Department of Justice at one time intended to submit a bill to extend the statute of limitations for those claims which the United States may assert on behalf of the Indians of the State of Maine arising out of trespasses on their ancestral aboriginal landholdings. H.R. 5023 addresses on a broader scale the same problem and the passage by the Congress of H.R. 5023 would render unnecessary the passage of legislation specifically for the benefit of the Maine Indians.

As has been stated, the Department of Justice recommends enactment of the amended bill providing for an extension to December 31, 1981.

The committee agrees that there is a clearly defined need for the amendment provided in this bill, and that prompt congressional action is necessary. It is recommended that the amended bill be considered favorably.

STATEMENTS UNDER CLAUSE 2(1)(2)(B), CLAUSE 2(1)(3) AND CLAUSE 2(1)(4) OF RULE XI AND CLAUSE 7(a)(1) OF RULE XIII OF THE HOUSE OF REPRESENTATIVES

COMMITTEE VOTE

(Rule XI 2(1)(2)(B))

On May 24, 1977, the Full Committee on the Judiciary approved the bill H.R. 5023 by a record vote of 26 yeas and 3 no.

COST

(Rule XIII 7(a)(1))

The enactment of this bill will not require any new or additional authorization or appropriation of funds.

OVERSIGHT STATEMENT

(Rule XI 2(1)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the committee's oversight responsibility with reference matters involving claims matters and related administrative and judicial procedures in accordance with Rule VI (b) of the Rules of the Committee on the Judiciary. The favorable consideration of this bill was recommended by that subcommittee and the committee has determined that legislation should be enacted as set forth in this bill.

by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

§ 2415. Time for commencing actions brought by the United States.

(a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: *Provided*, That in the event of later partial payment or written acknowledgement of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgement: *Provided further*, That an action for money damages brought by the United States for or on behalf of a recognized tribe, band or group of American Indians shall not be barred unless the complaint is filed more than six years and ninety days after the right of action accrued: *Provided further*, That an action for money damages which accrued on the date of enactment of this Act in accordance with subsection (g) brought by the United States for or on behalf of a recognized tribe, band, or group of American Indians, or on behalf of an individual Indian whose land is held in trust or restricted status, shall not be barred unless the complaint is filed more than eleven years after the right of action accrued: *after December 31, 1981* or more than two years after a final decision has been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

(b) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon a tort shall be barred unless the complaint is filed within three years after the right of action first accrues: *Provided*, That an action to recover damages resulting from a trespass on lands of the United States; an action to recover damages resulting from fire to such lands; an action to recover for diversion of money paid under a grant program; and an action for conversion of property of the United States may be brought within six years after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues, except that such actions for or on behalf of a recognized tribe, band, or group of American Indians, including actions relating to allotted trust or restricted Indian lands, or on behalf of an individual Indian whose land is held in trust or restricted status which accrued on the date of enactment of this Act in

interests of which are owed by individual Indians) <sup>1</sup> to be brought within 6 years and 90 days of the date of accrual. This provision applies to causes of action accruing after July 18, 1966, and is unaffected by Interior's proposed amendment.

The second amendment to 2415 was accomplished by the act of October 13, 1972, 86 Stat. 803, which concerned claims on behalf of any tribe, band or group of American Indians, or on behalf of individual Indians owning trust or restricted land, which claims had accrued prior to July 18, 1966. By this amendment such claims, whether of the kind described in subsection (a) or involving specified torts—including trespass—under subsection (b), could be filed within 11 years of July 18, 1966. It is these provisions which the bill seeks to amend by extending the period for another 10 years.

Since this Department litigates only those cases referred to us by the Department of the Interior, we obviously have no firsthand knowledge of the number of claims which accrued prior to 1966 but which the Interior Department has not yet been able to satisfactorily prepare for referral to this Department for litigation. However, the Department of the Interior has informed us that the number of possible claims is substantial, and we completely support, in the interests of justice, the amendment of the statute of limitations to afford the Government additional time to examine these claims and to prepare for litigation those claims found to be meritorious. But we question the need for a 10-year extension of time; we believe that with a concerted and diligent effort claims could be processed in a shorter period of time and that an amendment of the statute to December 31, 1981 would be sufficient.

The Department of Justice at one time intended to submit a bill to extend the statute of limitations for those claims which the United States may assert on behalf of the Indians of the State of Maine arising out of trespasses on their ancestral aboriginal landholdings. H.R. 5023 addresses on a broader scale the same problem and the passage by the Congress of H.R. 5023 would render unnecessary the passage of legislation specifically for the benefit of the Maine Indians.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

PATRICIA M. WALD,  
Assistant Attorney General.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made

<sup>1</sup> While the July 18, 1972, Act does not explicitly mention individual Indians, it obviously intends to include them since most of the trust land is held by the United States for individual Indians rather than for tribes.

The October 13, 1972, amendment also permits actions under subsection (a) to be filed within 2 years of our required final administrative decision, if that date is later than the 11 years after July 18, 1966. This provision would of course also be extended by the proposed amendment although it is extremely unlikely that there are now any administrative proceedings pending concerning pre-1966 claims.

#### BUDGET STATEMENT

(Rule XI 8(1) (3) (B))

As has been indicated in the committee statement as to cost made pursuant to Rule XIII (7) (a) (1), the bill will not require any new or additional authorization or appropriation of funds. The bill does not involve new budget authority nor does it require new or increased tax expenditures as contemplated by Clause 2(1) (3) (B) of Rule XI.

#### ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

(Rule XI 2(1) (3) (C))

The estimate received from the Director of the Congressional Budget Office is as follows:

#### CONGRESSIONAL BUDGET OFFICE,

U.S. CONGRESS,

Washington, D.C., June 1, 1977.

HON. PETER W. RODINO, JR.,  
Chairman, Committee on the Judiciary, U.S. House of Representatives,  
Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 5023, a bill to amend the statute of limitations provisions in section 2415 of title 28, United States Code, relating to claims by the United States on behalf of Indians, as ordered reported by the House Committee on the Judiciary.

Based on this review, it appears that no significant additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RYAN, Director.

#### OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

(Rule XI 2(1) (3) (D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1) (3) of House Rule XI.

#### INFLATIONARY IMPACT

(Rule XI 2(1) (3))

In compliance with clause 2(1) (4) of House Rule XI it is stated that this legislation will have no inflationary impact on prices and costs in the operation of the national economy.

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., May 18, 1977.*

Hon. PETER W. RODINO, Jr.,  
*Chairman, Committee on the Judiciary, House of Representatives,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 5023, a bill "To amend the statute of limitations provisions in section 2415 of title 28, United States Code, relating to claims by the United States on behalf of Indians.

We recommend that the bill be enacted if amended as suggested herein.

The act of July 18, 1966 (28 U.S.C. 2415) imposed a statute of limitations on tort or contract suits for money damages brought by the United States both on its own behalf and, in its capacity as trustee, on the behalf of Indians. The United States had 6 years from the date of enactment of the 1966 act to file claims, on the behalf of Indians, that arose prior to the date of the act. In 1972 Congress, in Public Law 92-485, amended 28 U.S.C. 2415 to extend this statute of limitations 5 more years, to July 18, 1977. Indians have expressed serious concern that the present statutory limitation might bar them from recovering damages in numerous causes that arose before 1966 because many of their claims may not be processed before the statute of limitations runs out. Accordingly, we recommend that the statute of limitations in 28 U.S.C. 2415 be extended until December 31, 1981, for claims brought by the United States on behalf of Indians where the cause of action arose prior to 1966.

Significantly, Congress recognized the unique nature of these suits and the peculiar difficulties in uncovering potential Indian claims and preparing them for litigation. In its report on the bill which became Public Law 92-485, the Senate Committee on Interior and Insular Affairs acknowledged the difficulty in identifying all Indian claims, and noted that the Bureau of Indian Affairs and the Office of the Solicitor had not been able to discover all the wrongs and then develop factual information necessary to get litigation filed. (1972 United States Code Congress and Administration News, p. 3593)

The 5-year extension granted in 1972 did not solve the problem. Many of these claims go back to the 18th and 19th centuries, and it is difficult to estimate the number which remain unprocessed. For example, the Field Solicitor's Office in Phoenix, Ariz., has developed approximately 35 claims in their geographical area which they will attempt to process by July 18, 1977. The Twin Cities Field Solicitor's Office, covering Minnesota, Iowa and Wisconsin, has developed 167 pre-1966 claims as yet unidentified or still being asserted that would have to be filed by July 18. Nationwide the unprocessed cases could amount to well over 1,000. The major reason why the 5-year extension was insufficient is that many tribes have only become aware of their tort and contract remedies in the last few years and thus have not, until recently, had adequate procedures to document claims as they arose. Therefore, hundreds of the pre-1966 claims are still being re-searched and identified and cannot all be filed by July 1977.

Due consideration should be given to the hardship which will be worked on tribes all over the country if Indian claims arising before 1966 are permanently barred from suit by 28 U.S.C. 2415. Tribes would be foreclosed from recovering damages for past unlawful uses of Indian lands. However, instead of the 10 years provided in H.R. 5023, we recommend that the statute of limitations be extended until December 31, 1981. This will provide adequate time to give these claims appropriate attention.

The Office of Management and Budget has advised that there is no objection to the presentation of this proposed report from the standpoint of the administration.

Sincerely,

LEO KRULITZ, *Solicitor.*

DEPARTMENT OF JUSTICE,  
*Washington, D.C., May 25, 1977.*

Hon. PETER W. RODINO, Jr.,  
*Chairman, Committee on the Judiciary, House of Representatives,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 5023, a bill to amend the statute of limitations provisions found in section 2415 of title 28 of the United States Code, insofar as those provisions relate to claims which might be made by the United States on behalf of an Indian or an Indian tribe.

By the act of July 18, 1966, 80 Stat. 305, Congress enacted a general statute of limitations governing claims by the United States. This statute was codified as 28 U.S.C. 2415 and 2416. Under 2415(a), Federal claims founded on a contract express or implied in law or fact accrued or within 1 year after the completion of any administrative proceedings required by law or contract, depending on which was the later date. Under 2415(b), tort actions generally were to be filed within 3 years after the right of action accrued but certain specified tort actions, including actions to recover damages for trespass on trust or restricted Indian lands, could be brought within 6 years of the date on which the cause of action accrued. Under section 2415(g), any cause of action accruing prior to the date of enactment (July 18, 1966) was to be deemed as accruing on that date.

Section 2415 has been amended twice and each amendment relates to suits brought by the Government on behalf of the Indians. By the act of July 18, 1972, 86 Stat. 499, 2415(a) was amended to provide that an action in contract on behalf of any "reorganized tribe, band or group of American Indians" would not be barred unless filed more than 6 years and 90 days after the cause of action first accrued. This provision relates to claims which have accrued, or will accrue, subsequent to July 18, 1966, and is unaffected by the current proposal. The same act amended 2415(b) so as to permit trespass actions (and other actions based on specified torts) on behalf of any tribe, band or group of Indians or relating to trust or restricted Indian lands (the beneficial