

109TH CONGRESS
2^D SESSION

S. 3885

To amend Public Law 98–513 to provide for the inheritance of small fractional interests within the Lake Traverse Indian Reservation.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 2006

Mr. JOHNSON introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To amend Public Law 98–513 to provide for the inheritance of small fractional interests within the Lake Traverse Indian Reservation.

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 “Lake Traverse Res-
5 ervation Act Amendments of 2006”.

6 **SEC. 2. AMENDMENTS TO LAKE TRAVERSE HEIRSHIP ACT.**

7 Public Law 98–513 is amended by striking section
8 5 (98 Stat. 2413) and inserting the following:

9 **“SEC. 5. INHERITANCE OF SMALL FRACTIONAL INTEREST.**

10 “(a) **DEFINITIONS.**—In this section:

1 “(1) ESCHEATMENT.—The term ‘escheatment’
2 means an escheatment to the Tribe of an interest in
3 land pursuant to this section.

4 “(2) SECRETARY.—The term ‘Secretary’ means
5 the Secretary of the Interior.

6 “(3) SMALL FRACTIONAL INTEREST.—The term
7 ‘small fractional interest’ means an undivided trust
8 or restricted interest in a parcel of land within the
9 reservation that—

10 “(A) represents less than 5 percent of the
11 entire undivided ownership of the parcel of land
12 (as reflected in the decedent’s estate inventory
13 as of the date on which the decisionmaker en-
14 ters the final decision determining heirs); and

15 “(B) does not exceed the equivalent of 2½
16 acres if the interest were to be expressed in
17 terms of its proportionate share of the total
18 acreage of the parcel of land of which the parcel
19 is a part.

20 “(b) INTESTATE INHERITANCE IN GENERAL.—Not-
21 withstanding section 3, no small fractional interest shall
22 pass by intestate succession under this Act or any other
23 provision of law except as provided in subsection (c).

24 “(c) INHERITANCE BY TRIBE.—If a person dies pos-
25 sessed of a small fractional interest that has not been de-

1 vided in accordance with subsection (d) to 1 or more eligi-
 2 ble devisees described in that subsection, the small frac-
 3 tional interest shall pass to the Tribe, with title to the
 4 interest to be held by the United States in trust for the
 5 Tribe.

6 “(d) INHERITANCE BY TESTAMENTARY DEVISE.—

7 “(1) ELIGIBLE DEVISEES.—Notwithstanding
 8 any other provision of this Act, and subject to para-
 9 graph (2), a small fractional interest may be devised
 10 only to the following eligible devisees:

11 “(A) The tribe.

12 “(B) Any person who—

13 “(i) is a member of the Tribe; or

14 “(ii) is eligible to be a member of the
 15 Tribe, on the condition that, not later than
 16 180 days after the date of receipt of notice
 17 of the probate hearing, the person provides
 18 proof of enrollment in the Tribe in accord-
 19 ance with the enrollment procedures of the
 20 Tribe.

21 “(2) REQUIREMENTS.—No devise of a small
 22 fractional interest shall be valid as to a devisee un-
 23 less—

24 “(A) the devisee is eligible to receive the
 25 interest by devise under paragraph (1);

1 “(B) the devisee is expressly identified in
2 the devise by name; and

3 “(C) the devise is made in a will that has
4 been approved by the Secretary in accordance
5 with section 2 of the Act of June 25, 1910 (36
6 Stat. 856, chapter 431).

7 “(3) HOLDING IN TRUST.—Any small fractional
8 interest devised in accordance with this subsection
9 shall pass to the devisee or devisees on the death of
10 the testator, with title to be held by the United
11 States in trust for the devisee or devisees.

12 “(e) NOTICE.—Not later than 180 days after the
13 date of enactment of the Lake Traverse Reservation Act
14 Amendments of 2006, the Secretary shall provide notice
15 of the requirements of this section to owners of trust and
16 restricted interests in land within the Lake Traverse In-
17 dian Reservation by—

18 “(1) posting written notice of the amendment
19 at the administrative headquarters of the Tribe and
20 at the Agency of the Bureau of Indian Affairs lo-
21 cated in Agency Village, South Dakota;

22 “(2) publishing the notice not fewer than 4
23 times in newspapers of general circulation in all
24 counties in which any part of the Lake Traverse In-
25 dian Reservation is located; and

1 “(3) sending the notice by first class mail to the
2 last known addresses of Indians with interests in
3 trust or restricted land within the Lake Traverse In-
4 dian Reservation.

5 “(f) CERTIFICATION.—After providing notice under
6 subsection (e), the Secretary shall—

7 “(1) certify that notice has been given in ac-
8 cordance with that subsection; and

9 “(2) publish notice of the certification in the
10 Federal Register.

11 “(g) ESCHEATMENTS.—

12 “(1) PURPOSES.—The purposes of this sub-
13 section are—

14 “(A) to establish a process for providing
15 compensation for escheatments; and

16 “(B) to ratify the escheatments.

17 “(2) RATIFICATION OF ESCHEATMENTS.—

18 “(A) IN GENERAL.—Subject to the re-
19 quirements of this subsection, each escheatment
20 is ratified.

21 “(B) HOLDING IN TRUST.—The title to
22 each interest subject to an escheatment shall be
23 held by the United States in trust for the Tribe.

24 “(3) ACTIONS BARRED.—Notwithstanding any
25 other provision of law, except as provided in sub-

1 section (4)(C)(ii), no court shall have jurisdiction
2 over a claim challenging—

3 “(A) an escheatment of any property inter-
4 est pursuant to this section; or

5 “(B) the compensation provided for an
6 escheatment.

7 “(4) COMPENSATION.—

8 “(A) IN GENERAL.—The Secretary shall
9 provide compensation in an amount described in
10 subparagraph (B) to any individual that, absent
11 an escheatment, would have inherited land or
12 an interest in land.

13 “(B) AMOUNT.—

14 “(i) IN GENERAL.—In determining
15 the amount of compensation to be provided
16 under subparagraph (A), the Secretary
17 shall take into consideration—

18 “(I) any appraisal report pre-
19 pared incident to the probate of the
20 estate of the Indian decedent who last
21 owned the applicable interest imme-
22 diately prior to its escheat to the
23 Tribe; or

24 “(II) if an appraisal report de-
25 scribed in subclause (I) is not avail-

1 able, the appraised value of the land
2 or interest in land as of the date of
3 probate of the land or interest.

4 “(ii) INTEREST.—The amount of com-
5 pensation provided under this subsection
6 shall include interest calculated from the
7 date of probate of the applicable land or
8 interest in land in accordance with section
9 3116 of title 40, United States Code.

10 “(C) REVIEW OF DETERMINATIONS.—

11 “(i) ADMINISTRATIVE REVIEW.—A de-
12 termination by the Secretary of the
13 amount of compensation provided under
14 this subsection shall be subject to adminis-
15 trative review in accordance with regula-
16 tions of the Secretary contained in part 2
17 of title 25, Code of Federal Regulations (or
18 successor regulations).

19 “(ii) JUDICIAL REVIEW.—

20 “(I) IN GENERAL.—No court
21 shall have jurisdiction to review a de-
22 termination by the Secretary of the
23 amount of compensation provided
24 under this subsection until the date
25 on which a final decision is made with

1 respect to the administrative review of
2 the determination.

3 “(II) DEADLINE.—

4 “(aa) IN GENERAL.—An ac-
5 tion seeking judicial review of a
6 determination by the Secretary
7 under this subsection shall be
8 filed by not later than 1 year
9 after the date described in sub-
10 clause (I).

11 “(bb) FAILURE TO MEET
12 DEADLINE.—If the deadline de-
13 scribed in item (aa) is not met
14 with respect to a determination
15 of the Secretary, the determina-
16 tion shall not be subject to judi-
17 cial review.

18 “(D) EXCLUSIVE REMEDY.—Compensation
19 provided under this subsection with respect to
20 an escheatment shall be the exclusive remedy
21 for the escheatment.

22 “(5) REGULATIONS.—The Secretary may pro-
23 mulgate such regulations as the Secretary deter-
24 mines to be necessary to carry out this subsection.

25 “(6) APPLICABILITY.—

1 “(A) IN GENERAL.—This section shall
2 apply to escheatments only if—

3 “(i) a provision contained in any sub-
4 sections (a) through (d) is determined to
5 be invalid for any reason by a court of
6 competent jurisdiction; and

7 “(ii) all appeals of such a determina-
8 tion are exhausted.

9 “(B) EFFECT OF SUBSECTION.—Nothing
10 in this subsection invalidates any provision con-
11 tained in any subsections (a) through (d).

12 “(h) EFFECT ON INTERESTS AND WILLS.—Nothing
13 in this section shall affect any interest in the estate of
14 a person who dies, or the validity or effect of any will exe-
15 cuted, before the date that is 1 year after the date on
16 which the Secretary publishes notice of the certification
17 under subsection (f).”.

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