

110TH CONGRESS
1ST SESSION

S. 1901

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

JULY 30, 2007

Mr. THUNE 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 Heirship Act of 2007”.

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:

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

2 “(a) DEFINITION OF SMALL FRACTIONAL INTER-
3 EST.—In this section, the term ‘small fractional interest’
4 means an undivided trust or restricted interest in a parcel
5 of land within the reservation that—

6 “(1) represents less than 5 percent of the entire
7 undivided ownership of the parcel of land (as re-
8 flected in the decedent’s estate inventory as of the
9 date on which the decisionmaker enters the final de-
10 cision determining heirs); and

11 “(2) does not exceed the equivalent of 2½ acres
12 if the interest were to be expressed in terms of its
13 proportionate share of the total acreage of the parcel
14 of land of which the interest is a part.

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

19 “(c) INHERITANCE BY TRIBE.—If a person dies pos-
20 sessed of a small fractional interest that has not been de-
21 vised in accordance with subsection (d) to 1 or more eligi-
22 ble devisees described in that subsection, the small frac-
23 tional interest shall pass to the Tribe, with title to the
24 interest to be held by the United States in trust for the
25 Tribe.

26 “(d) INHERITANCE BY TESTAMENTARY DEVISE.—

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

5 “(A) The tribe.

6 “(B) Any person who is an enrolled mem-
7 ber of the Tribe prior to entry of the final pro-
8 bate order.

9 “(2) REQUIREMENTS.—

10 “(A) NO SURVIVING SPOUSE.—In any case
11 in which a surviving spouse of a decedent does
12 not exist, the small fractional interest of the de-
13 cedent shall pass only to an heir of the decedent
14 who is an enrolled member of the Tribe before
15 the date on which a final probate order relating
16 to the estate is entered.

17 “(B) DEVISES OF SMALL FRACTIONAL IN-
18 TERESTS.—No devise of a small fractional in-
19 terest shall be valid as to a devisee unless—

20 “(i) the devisee is eligible to receive
21 the small fractional interest by devise
22 under paragraph (1); and

23 “(ii) the devise is made in a will that
24 has been approved by the Secretary of the
25 Interior in accordance with section 2 of the

1 Act of June 25, 1910 (36 Stat. 856, chap-
2 ter 431).

3 “(C) DESCENT OF INTEREST.—A small
4 fractional interest shall pass, in trust or re-
5 stricted status—

6 “(i)(I) to the surviving child of the de-
7 cedent, if the child is eligible to receive the
8 interest by devise under paragraph (1); or

9 “(II) if 2 or more surviving children
10 of the decedent are eligible to receive the
11 interest, to the oldest of the children;

12 “(ii)(I) if the interest does not pass
13 under clause (i), to the surviving grand-
14 child of the decedent, if the grandchild is
15 eligible to receive the interest by devise
16 under paragraph (1); or

17 “(II) if 2 or more surviving grand-
18 children of the decedent are eligible to re-
19 ceive the interest, to the oldest of the
20 grandchildren;

21 “(iii)(I) if the interest does not pass
22 under clause (i) or (ii), to the surviving
23 great-grandchild of the decedent, if the
24 great-grandchild is eligible to receive the
25 interest by devise under paragraph (1); or

1 “(II) if 2 or more surviving great-
2 grandchildren of the decedent are eligible
3 to receive the interest, to the oldest of the
4 great-grandchildren; or

5 “(iv) if the interest does not pass
6 under clause (i), (ii), or (iii), to the Tribe.

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 **SEC. 3. NOTICE TO LANDOWNERS; CERTIFICATION.**

13 (a) NOTICE.—Not later than 180 days after the date
14 of enactment of this Act, the Secretary of the Interior (re-
15 ferred to in this Act as the “Secretary”) shall provide no-
16 tice of the amendment made by section 2 to owners of
17 trust and restricted interests in land within the Lake Tra-
18 verse Indian Reservation by—

19 (1) posting written notice of the amendment at
20 the administrative headquarters of the Sisseton-
21 Wahpeton Oyate of the Lake Traverse Reservation
22 of North Dakota and South Dakota and at the
23 Agency of the Bureau of Indian Affairs located in
24 Agency Village, South Dakota;

1 (2) publishing the notice not fewer than 4 times
2 in newspapers of general circulation in all counties
3 in which any part of the Lake Traverse Reservation
4 is located; and

5 (3) sending the notice by first class mail to the
6 last known addresses of Indians with interests in
7 trust or restricted land within the Lake Traverse
8 Reservation.

9 (b) CERTIFICATION.—After providing notice under
10 subsection (a), the Secretary shall—

11 (1) certify that notice has been given in accord-
12 ance with that subsection; and

13 (2) publish notice of the certification in the
14 Federal Register.

15 **SEC. 4. ESCHEATMENTS.**

16 (a) DEFINITION OF ESCHEATMENT.—In this section,
17 the term “escheatment” means an escheatment to the
18 Sisseton-Wahpeton Oyate of an interest in land pursuant
19 to section 5 of Public Law 98–513 (98 Stat. 2411).

20 (b) PURPOSES.—The purposes of this section are—

21 (1) to establish a process for providing com-
22 pensation for escheatments; and

23 (2) to ratify the escheatments.

24 (c) RATIFICATION OF ESCHEATMENTS.—

1 (1) IN GENERAL.—Subject to the requirements
2 of this section, each escheatment is ratified.

3 (2) HOLDING IN TRUST.—The title to each in-
4 terest subject to an escheatment shall be held by the
5 United States in trust for the Sisseton-Wahpeton
6 Oyate.

7 (d) ACTIONS BARRED.—Notwithstanding any other
8 provision of law, except as provided in subsection
9 (4)(C)(ii), no court shall have jurisdiction over a claim
10 challenging—

11 (1) an escheatment; or

12 (2) the compensation provided for an
13 escheatment.

14 (e) COMPENSATION.—

15 (1) IN GENERAL.—The Secretary shall provide
16 compensation in an amount described in paragraph

17 (2) to any individual that, absent an escheatment,
18 would have inherited land or an interest in land.

19 (2) AMOUNT.—

20 (A) IN GENERAL.—In determining the
21 amount of compensation to be provided under
22 paragraph (1), the Secretary shall take into
23 consideration—

24 (i) any appraisal report prepared with
25 respect to the probate of the estate of the

1 decedent that owned the applicable land or
2 interest in land on the day before the date
3 on which the land or interest was subject
4 to an escheatment; or

5 (ii) if an appraisal described in clause
6 (i) is not available, the appraised value of
7 the land or interest in land as of the date
8 of probate of the land or interest.

9 (B) INTEREST.—The amount of compensa-
10 tion provided under this subsection shall include
11 interest calculated from the date of probate of
12 the applicable land or interest in land in accord-
13 ance with section 3116 of title 40, United
14 States Code.

15 (3) REVIEW OF DETERMINATIONS.—

16 (A) ADMINISTRATIVE REVIEW.—A deter-
17 mination by the Secretary of the amount of
18 compensation provided under this subsection
19 shall be subject to administrative review in ac-
20 cordance with regulations of the Secretary con-
21 tained in chapters I and II of title 25, Code of
22 Federal Regulations (or successor regulations).

23 (B) JUDICIAL REVIEW.—

24 (i) IN GENERAL.—No court shall have
25 jurisdiction to review a determination by

1 the Secretary of the amount of compensa-
2 tion provided under this subsection until
3 the date on which a final decision is made
4 with respect to the administrative review of
5 the determination.

6 (ii) DEADLINE.—

7 (I) IN GENERAL.—An action
8 seeking judicial review of a determina-
9 tion by the Secretary under this sub-
10 section shall be filed by not later than
11 1 year after the date described in
12 clause (i).

13 (II) FAILURE TO MEET DEAD-
14 LINE.—If the deadline described in
15 subclause (I) is not met with respect
16 to a determination of the Secretary,
17 the determination shall not be subject
18 to judicial review.

19 (4) EXCLUSIVE REMEDY.—Compensation pro-
20 vided under this subsection with respect to an
21 escheatment shall be the exclusive remedy for the
22 escheatment.

23 (f) REGULATIONS.—The Secretary shall promulgate
24 such regulations as the Secretary determines to be nec-
25 essary to carry out this section.

1 (g) APPLICABILITY.—

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

4 (A) the amendment made by section 2 is
5 determined to be invalid for any reason by a
6 court of competent jurisdiction; and

7 (B) all appeals of such a determination are
8 exhausted.

9 (2) EFFECT OF SUBSECTION.—Nothing in this
10 subsection invalidates the amendment made by sec-
11 tion 2.

12 **SEC. 5. EFFECTIVE DATE.**

13 (a) EFFECT ON INTERESTS.—The amendment made
14 by section 2 shall not affect any interest in the estate of
15 a person who dies before the date that is 1 year after the
16 date on which the Secretary publishes notice of the certifi-
17 cation under section 3(b).

18 (b) EFFECT ON WILLS.—The amendment made by
19 section 2 shall not affect the validity or effect of any will
20 executed before the date that is 1 year after the date on
21 which the Secretary publishes notice of the certification
22 under section 3(b).