

109TH CONGRESS
1ST SESSION

H. R. 1104

To repeal the Federal acknowledgment of the Schaghticoke Tribal Nation.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2005

Mrs. JOHNSON of Connecticut (for herself, Mr. SHAYS, and Mr. SIMMONS) introduced the following bill; which was referred to the Committee on Resources

A BILL

To repeal the Federal acknowledgment of the Schaghticoke Tribal Nation.

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 “Schaghticoke Acknowl-
5 edgment Repeal Act of 2005”.

6 **SEC. 2. REPEAL OF THE FEDERAL ACKNOWLEDGMENT OF**
7 **THE SCHAGHTICOKE TRIBAL NATION.**

8 (a) FINDINGS.—Congress finds the following:

9 (1) The Bureau of Indian Affairs should ac-
10 knowledge petitioning groups as Indian tribes within

1 the meaning of Federal law only when petitioning
2 groups fully, faithfully, and objectively satisfy each
3 of the 7 mandatory acknowledgment criteria under
4 section 83.7 of title 25, Code of Federal Regula-
5 tions.

6 (2) The Bureau of Indian Affairs issued a Pro-
7 posed Finding, a preliminary decision, dated Decem-
8 ber 2, 2002, and published in the Federal Register
9 on December 11, 2002 (67 Fed. Reg. 76184), that
10 declined to acknowledge the Schaghticoke Tribal Na-
11 tion as an Indian tribe within the meaning of Fed-
12 eral law because the tribe did not satisfy each of the
13 7 mandatory criteria under section 83.7 of title 25,
14 Code of Federal Regulations, more particularly:

15 (A) The Proposed Finding concluded that
16 the Schaghticoke Tribal Nation did not satisfy
17 criterion 83.7(b), the demonstration of a contin-
18 uous community from the first sustained histor-
19 ical contact to the present, because there was
20 “insufficient evidence” to demonstrate that a
21 community existed for 36 years from 1940 to
22 1967 and from 1996 to the present.

23 (B) The Proposed Finding concluded that
24 the Schaghticoke Tribal Nation did not satisfy
25 criterion 83.7(c), the demonstration of contin-

1 uous political authority and influence within the
2 community, because there was “insufficient evi-
3 dence” or “no specific evidence” or both to
4 demonstrate that political authority and influ-
5 ence was exercised within the community for
6 165 years from 1801 to 1875, 1885 to 1967,
7 and 1996 to the present.

8 (C) The Proposed Finding concluded fur-
9 ther concerning criterion 83.7(c) that the State
10 of Connecticut’s continuous relationship with
11 individuals claiming to be Schaghticoke and liv-
12 ing on land set aside for them as a reservation
13 did not provide additional evidence during those
14 periods when there was an absence of specific
15 evidence of the exercise of political influence
16 within the group within the meaning of the ac-
17 knowledgment regulations.

18 (D) The Proposed Finding raised concerns
19 that the Schaghticoke Tribal Nation’s member-
20 ship list excluded prominent individuals who
21 had been ousted from or refused to be a part
22 of the Schaghticoke Tribal Nation petition, in-
23 cluding members of the rival Schaghticoke In-
24 dian Tribe, members of the Coggswell family,
25 and former Chief Irving Harris. In addition, the

1 membership list included newly recruited Jo-
2 seph D. Kilson descendants who had not had
3 any connection with the Schaghticoke group
4 throughout the 20th century.

5 (3) After further public comment and submis-
6 sions by the petitioner and interested parties, the
7 Bureau of Indian Affairs issued a Final Determina-
8 tion, dated January 29, 2004 and published in the
9 Federal Register on February 5, 2004 (69 Fed. Reg.
10 5570), that acknowledged the Schaghticoke Tribal
11 Nation as an Indian tribe within the meaning of
12 Federal law.

13 (4) The Final Determination reached this posi-
14 tive result only through the following:

15 (A) Explicit, premeditated manipulation of
16 both the evidence and established acknowledg-
17 ment standards, as evidenced by the following:

18 (i) In a briefing paper dated January
19 12, 2004, prepared by the Office of Fed-
20 eral Acknowledgment and submitted to
21 Principal Deputy Assistant Secretary-In-
22 dian Affairs Aurene Martin regarding the
23 forthcoming Final Determination, the Of-
24 fice of Federal Acknowledgment requested
25 guidance from the Principal Deputy Assist-

1 ant Secretary-Indian Affairs on whether
2 the Schaghticoke Tribal Nation should be
3 “acknowledged even though evidence of po-
4 litical influence and authority is absent or
5 insufficient for two substantial historical
6 periods, and if so, on what grounds?”.

7 (ii) In the briefing paper, Office of
8 Federal Acknowledgment staff rec-
9 ommended, and the Principal Deputy As-
10 sistant Secretary-Indian Affairs endorsed,
11 an analytic approach that explicitly dis-
12 carded prior agency precedent and regula-
13 tions governing the acknowledgment proc-
14 ess to overcome the absence and insuffi-
15 ciency of evidence to demonstrate contin-
16 uous political influence and authority, as
17 the regulations require.

18 (iii) This approach, according to the
19 briefing paper, “would require a change in
20 how continuous state recognition with a
21 reservation was treated as evidence.”.

22 (iv) The briefing paper also acknowl-
23 edged the possibility of declining acknowl-
24 edgment of the Schaghticoke Tribal Na-
25 tion, saying that option “maintains the

1 current interpretations of the regulations
2 and established precedents concerning how
3 continuous tribal existence is dem-
4 onstrated.”.

5 (B) Ignoring agency admissions that “in-
6 sufficient direct evidence” or “little or no direct
7 evidence” exists to satisfy the political authority
8 criterion for a period of 118 years, as evidenced
9 by the following:

10 (i) The Bureau of Indian Affairs ad-
11 mits in the Final Determination that
12 “there is little or no direct evidence to
13 demonstrate political influence within the
14 Schaghticoke between 1892 and 1936,”
15 and elsewhere that “there is insufficient di-
16 rect evidence to demonstrate criterion 83.7
17 (c) between 1892 and 1936.”.

18 (ii) The Bureau of Indian Affairs ad-
19 mits in the final determination that “there
20 remains little direct evidence concerning
21 political authority or influence among the
22 schaghticoke for this time period [1801–
23 1875]”.

24 (iii) The Bureau of Indian Affairs ad-
25 mits in a January 12, 2004, briefing paper

1 prepared for the Principal Deputy Assist-
2 ant Secretary-Indian Affairs that “evidence
3 of political influence and authority [within
4 the Schaghticoke Tribal Nation] is absent
5 or insufficient for two substantial historical
6 periods.”

7 (C) An arbitrary reevaluation and erro-
8 neous interpretation of the State’s relationship
9 with the Schaghticoke, where the Bureau of In-
10 dian Affairs overturned longstanding judicial
11 precedent and interpretation that it repeatedly
12 relied upon in prior acknowledgment decisions
13 involving New England Indian groups, as evi-
14 denced by the following:

15 (i) The Final Determination acknowl-
16 edged that in using the State’s relationship
17 with the group as evidence to satisfy the
18 political community and authority criteria,
19 the Bureau of Indian Affairs was reversing
20 its holding in the Proposed Finding, which
21 stated that “a continuous state relation-
22 ship with a reservation did not provide ad-
23 ditional evidence during those periods
24 when there was an absence of specific evi-
25 dence of the exercise of political influence

1 within the group within the meaning of the
2 acknowledgment regulations.”.

3 (ii) To reach the positive result in the
4 Final Determination, the Bureau of Indian
5 Affairs erroneously equated the fact that
6 the State of Connecticut had set aside
7 tracts of land where individuals claiming
8 descent from a tribe that existed in colo-
9 nial times could live, including providing
10 funds and an overseer for these individ-
11 uals, with the act of recognizing a sov-
12 ereign entity that has existed as a distinct
13 political community as it is understood
14 under Federal law.

15 (iii) The Bureau of Indian Affairs
16 used this faulty analysis to fill gaps where,
17 by the agency’s admission, “insufficient”
18 or “little or no direct” evidence existed to
19 demonstrate continuous community and
20 political authority.

21 (iv) The use of the State’s relation-
22 ship with the Schaghticoke group as evi-
23 dence of continuous political authority spe-
24 cifically subverts the intent of the regula-
25 tions, since the Bureau of Indian Affairs

1 previously considered and rejected the use
2 of such arrangements as evidence because
3 it merely emphasized Indian ancestry, not
4 the existence of tribal political authority.

5 (v) In the Final Determination ac-
6 knowledging the Mohegan tribe in Con-
7 necticut, the Bureau of Indian Affairs
8 properly interpreted State recognition, de-
9 claring that “State recognition is one form
10 of evidence that a group meets criterion
11 (a), but it is not grounds for automatically
12 considering a group to be entitled to Fed-
13 eral recognition.”. In addition, the Bureau
14 of Indian Affairs adhered to this precedent
15 and interpretation of a State relationship
16 in its proposed findings and final deter-
17 minations concerning the Narrangansett
18 tribe in Rhode Island, the Gay Head
19 Wampanoag tribe in Massachusetts, and
20 the Historic Eastern Pequot and the Gold-
21 en Hill Paugussett tribes in Connecticut.

22 (vi) Without the Bureau of Indian Af-
23 fairs’ use of this erroneous interpretation
24 of the State’s relationship with the
25 Schaghticoke group to substitute for “in-

1 sufficient” or absent evidence necessary to
2 satisfy the continuous community and po-
3 litical authority criteria, the Schaghticoke
4 Tribal Nation would not have satisfied
5 these mandatory criteria and would have
6 been denied acknowledgment.

7 (D) Unprecedented and inaccurate meth-
8 ods to calculate tribal marriage rates, without
9 which the Schaghticoke Tribal Nation would
10 not have reached the 50 percent intra-marriage
11 rate threshold and consequently would not have
12 satisfied the criteria for political authority for a
13 74 year period from 1801 to 1875, as evidenced
14 by the following:

15 (i) Under section 83.7(c)(3) of title
16 25, Code of Federal Regulations, (com-
17 monly known as the so-called “carry-over”
18 provision), in the absence of direct evi-
19 dence, a petitioner can satisfy the political
20 authority criterion for a particular period
21 if it demonstrates one of that “at least 50
22 percent of the marriages in the group are
23 between members of the group,” a thresh-
24 old that demonstrates community for a
25 particular period under section

1 83.7(b)(2)(ii) of title 25, Code of Federal
2 Regulations.

3 (ii) Because the Bureau of Indian Af-
4 fairs admits in the Final Determination
5 that “there remains little direct evidence
6 concerning political authority or influence
7 among the Schaghticoke for this time pe-
8 riod [1801 to 1875],” the agency invoked
9 the carry-over provision to demonstrate po-
10 litical authority for this period because it
11 calculated that more than 50 percent of
12 the marriages in the group were between
13 members of the group.

14 (iii) In a filing before the Interior
15 Board of Indian Appeals, dated December
16 2, 2004, the Office of the Solicitor, Bureau
17 of Indian Affairs, admitted that the Final
18 Determination used a methodology in cal-
19 culating and analyzing marriage rates that
20 “is not consistent with prior precedent in
21 calculating rates of marriages under
22 83.7(b)(2)(ii) and provides no explanation
23 for the inconsistency.”.

24 (iv) The Office of the Solicitor states
25 that “previous acknowledgment decisions

1 interpret 83.7(b)(2)(ii) to require that 50
2 percent of the marriages are between mem-
3 bers of the group. In contrast, the Sum-
4 mary on [Schaghticoke Tribal Nation] in-
5 advertently relied on the number of mem-
6 bers of the group who married other mem-
7 bers, which results in a higher count.”.

8 (v) The Office of the Solicitor also
9 concludes that mathematical errors were
10 made in tabulating marriage rates in the
11 Final Determination that when corrected
12 reduces the rate below 50 percent, regard-
13 less whether “marriages” as is customary,
14 or “members of the group who marry other
15 members,” which is unprecedented, is
16 counted.

17 (vi) Since the Schaghticoke Tribal
18 Nation marriage rates do not meet the 50
19 percent threshold, the carry-over provision
20 is rendered inoperative.

21 (vii) Without the carry-over provision
22 to substitute for insufficient evidence to
23 demonstrate political authority for the time
24 period from 1801 to 1875, the political au-
25 thority criterion is not satisfied, and the

1 Bureau of Indian Affairs should have de-
2 clined Federal acknowledgment in the
3 Final Determination.

4 (viii) The Office of the Solicitor fur-
5 ther advises that during the Interior Board
6 of Indian Appeals request for reconsider-
7 ation currently under way, the Final De-
8 termination “should not be affirmed on
9 these grounds absent explanation or new
10 evidence.”.

11 (E) A fraudulent membership list for the
12 Schaghticoke Tribal Nation, without which the
13 Schaghticoke group could not be acknowl-
14 edged—a result the Office of Federal Acknowl-
15 edgment within the Bureau of Indian Affairs
16 calls “undesirable” in internal briefing papers,
17 as evidenced by the following:

18 (i) The Schaghticoke group has expe-
19 rienced intense factional conflict for many
20 years, with the resulting split in the early
21 1990s between the Schaghticoke Tribal
22 Nation and the Schaghticoke Indian Tribe
23 into two distinct groups with distinct com-
24 munities and political processes.

1 (ii) The January 12, 2004, briefing
2 paper prepared by Office of Federal Ac-
3 knowledgment staff for the Principal Dep-
4 uty Assistant Secretary-Indian Affairs
5 states the “Schaghticoke Tribal Nation
6 membership list did not include a substan-
7 tial portion of the actual social and polit-
8 ical community.”.

9 (iii) The briefing paper concludes that
10 “the activities of these individuals were an
11 essential part of the evidence for the [Pro-
12 posed Findings] conclusion that the
13 [Schaghticoke Tribal Nation] met criterion
14 83.7(b) [community] and 83.7(c) [political
15 authority] from 1967 to 1996 and their
16 absence was one of the reasons the [Pro-
17 posed Finding] concluded these criteria
18 were not met from 1996 to the present.
19 After 1996, these individuals either de-
20 clined to reenroll as the leadership required
21 of all members, or subsequently relin-
22 quished membership, because of strong po-
23 litical difference with the current
24 [Schaghticoke Tribal Nation] administra-
25 tion”.

1 (iv) In response to concerns raised in
2 the Proposed Finding, the Schaghticoke
3 Tribal Nation unsuccessfully attempted to
4 purge the Kilson descendents from the
5 membership list and to persuade promi-
6 nent Schaghticoke, including Schaghticoke
7 Indian Tribe members, the Coggsells and
8 Irving Harris, to rejoin.

9 (v) On September 27, 2003, the day
10 before the end of the Schaghticoke Tribal
11 Nation's comment period prior to the
12 issuance of the Final Determination, 15
13 Schaghticoke Indian Tribe members ap-
14 plied for and were granted membership in
15 the Schaghticoke Tribal Nation. Nine of
16 those 15 signed a letter on September 29,
17 2003, however, stating that they were not
18 Schaghticoke Tribal Nation members, had
19 no intention of becoming members, and
20 that "[their] signatures were obtained by
21 fraud".

22 (vi) In the briefing paper, Office of
23 Federal Acknowledgment staff expresses
24 disappointment that these irregularities
25 could undermine the Schaghticoke Tribal

1 Nation's goals, saying "the current status
2 of a long-term pattern of factional conflict
3 may either have the undesirable con-
4 sequence of negatively determining
5 Schaghticoke's tribal status. . .".

6 (5) Congress acknowledges that two noted Na-
7 tive American anthropologists retained to advocate
8 for the Schaghticoke Tribal Nation concluded after
9 exhaustive, years-long research that the group did
10 not and could not establish continuous community
11 and political authority as required by the acknowl-
12 edgment regulations, more particularly:

13 (A) Dr. William Starna, a professor of an-
14 thropology and expert in tribal acknowledgment
15 at the State University of New York at
16 Oneonta, who has worked on behalf of tribal pe-
17 titioners Gay Head Wampanoag, Golden Hill
18 Paugussett, and Eastern Pequot in addition to
19 the Schaghticoke Tribal Nation, concluded in
20 two separate reports, in 1989 and again in
21 1993, that the Schaghticoke Tribal Nation
22 could not satisfy either the continuous commu-
23 nity or political authority and influence criteria.

24 (B) Dr. Ann McMullen, a professor of an-
25 thropology and expert in tribal acknowledgment

1 at Brown University, who has worked on behalf
2 of tribal petitioners Mashpee and Paucatuck
3 Eastern Pequot, conducted further research at
4 the request of the Schaghticoke Tribal Nation.
5 In a 1999, report Dr. McMullen affirmed Dr.
6 Starna's conclusions, saying that "too much
7 still rests on Schaghticoke as a piece of Indian
8 land occasionally occupied by Indians and not
9 the focal point for a larger dispersed tribe".

10 (6) Paragraph (4) demonstrates that the
11 Schaghticoke Tribal Nation does not satisfy each of
12 the seven mandatory criteria for acknowledgment
13 under section 83.7 of title 25, Code of Federal Reg-
14 ulations. If further demonstrates willful manipula-
15 tion of both the acknowledgment regulations and ex-
16 isting agency precedent by the Bureau of Indian Af-
17 fairs.

18 (7) For the reasons described in paragraphs (4)
19 and (6), the Final Determination acknowledging the
20 Schaghticoke Tribal Nation as an Indian tribe with-
21 in the meaning of Federal law is erroneous and un-
22 lawful.

23 (8) Congress cannot allow the erroneous and
24 unlawful decision of the Bureau of Indian Affairs to
25 acknowledge the Schaghticoke Tribal Nation as an

1 Indian tribe within the meaning of Federal law to
2 stand because of the significant, harmful, and irre-
3 versible effects it would have on neighboring commu-
4 nities, more particularly:

5 (A) A sovereign, federally acknowledged
6 Indian tribe is exempted from a broad range of
7 State laws and regulations, including State and
8 local taxation.

9 (B) A sovereign, federally acknowledged
10 Indian tribe is granted rights under Federal law
11 to engage in casino-style gaming under the In-
12 dian Gaming Regulatory Act, and the construc-
13 tion and operation of a Las Vegas-style casino
14 in Western Connecticut would place unbearable
15 burdens on municipalities, on local tax bases
16 and taxpayers, and on an aging transportation
17 infrastructure that could not tolerate the vol-
18 ume of traffic such a facility would create.

19 (C) A sovereign, federally acknowledged
20 Indian tribe has standing in Federal court to
21 pursue land claims litigation on property under
22 the Federal laws commonly known as the “Non-
23 Intercourse Act”, claims that threaten land-
24 owners’ property rights, cloud title in wide-

1 spread areas, and prevent the sale of real prop-
2 erty.

3 (b) PURPOSES.—The purposes of the Act are as fol-
4 lows:

5 (1) To repeal the Bureau of Indian Affairs' ac-
6 knowledgment of the Schaghticoke Tribal Nation as
7 an Indian tribe within the meaning of Federal law.

8 (2) To correct the unlawful and erroneous deci-
9 sion by the Bureau of Indian Affairs, in violation of
10 Federal regulations and contrary to longstanding
11 agency precedent, to acknowledge the Schaghticoke
12 Tribal Nation as an Indian tribe within the meaning
13 of Federal law.

14 (3) To protect the taxpayers and municipalities
15 of the State of Connecticut from the undue burdens
16 and violations of sovereignty described in subsection
17 (a)(8).

18 (4) To affirm the 7 mandatory acknowledgment
19 criteria and prevent a precedent setting decision that
20 relaxes them for northeastern groups.

21 (c) DEFINITIONS.—For the purposes of this Act, the
22 following definitions apply:—

23 (1) SCHAGHTICOKE TRIBAL NATION.—The term
24 “Schaghticoke Tribal Nation” means the
25 Schaghticoke Tribal Nation, a federally recognized

1 Indian tribe based at 33 Elizabeth Street, 4th Floor,
2 Derby, Connecticut, 06148.

3 (2) FINAL DETERMINATION.—The term “Final
4 Determination” means the decision document con-
5 taining an administrative decision made pursuant to
6 section 83 et seq. of title 25, Code of Federal Regu-
7 lations by the Office of Federal Acknowledgment,
8 Bureau of Indian Affairs, dated January 29, 2004,
9 affirmed by Aurene M. Martin, Principal Deputy As-
10 sistant Secretary-Indian Affairs, published in the
11 Federal Register on February 5, 2004 (69 Fed. Reg.
12 5570), that acknowledged the Schaghticoke Tribal
13 Nation as an Indian tribe within the meaning of
14 Federal law.

15 (3) REQUEST FOR RECONSIDERATION.—The
16 term “Request for Reconsideration” means the ad-
17 ministrative appeal of the Final Determination, initi-
18 ated by the Attorney General of the State of Con-
19 necticut on behalf of the State and Interested Par-
20 ties pursuant to section 83.11 of title 25, Code of
21 Federal Regulations, In re Federal Acknowledgment
22 of the Schaghticoke Tribal Nation, Docket Nos.
23 IBIA 04–83–A, IBIA 04–94–A, IBIA 04–95–A,
24 IBIA 04–96–A, and IBIA 04–97–A.

1 (d) REPEAL OF THE FEDERAL ACKNOWLEDGMENT
2 OF THE SCHAGHTICOKE TRIBAL NATION.—

3 (1) The Schaghticoke Tribal Nation is not an
4 Indian tribe within the meaning of Federal law and
5 does not maintain a government-to-government rela-
6 tionship with the United States.

7 (2) The Final Determination acknowledging the
8 Schaghticoke Tribal Nation as an Indian tribe with-
9 in the meaning of Federal law, maintaining a gov-
10 ernment-to-government relationship with the United
11 States, is repealed.

12 (3) The outcome of the Request for Reconsider-
13 ation shall have no effect on this Act.

○