

TO REQUIRE THE PROMPT REVIEW BY THE SECRETARY OF THE INTERIOR
OF THE LONG-STANDING PETITIONS FOR FEDERAL RECOGNITION OF
CERTAIN INDIAN TRIBES, AND FOR OTHER PURPOSES

NOVEMBER 19, 2004.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 5134]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 5134) to require the prompt review by the Secretary of the Interior of the long-standing petitions for Federal recognition of certain Indian tribes, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. PROMPT CONSIDERATION OF CERTAIN PETITIONS REQUESTING FEDERAL RECOGNITION AS AN INDIAN TRIBE.

(a) **TIME PERIOD FOR PROPOSED FINDING.**—Not later than 6 months after the date of the enactment of this Act, the Secretary shall publish a proposed finding with respect to the petition for Federal recognition of each eligible tribe consistent with part 83 of title 25, Code of Federal Regulations.

(b) **TIME PERIOD FOR FINAL DETERMINATION.**—Not later than one year after the date of the enactment of this Act, the Secretary shall publish a final determination with respect to the petition for Federal recognition of each eligible tribe.

(c) **NOTIFICATION; OPT IN.**—

(1) **NOTIFICATION OF TRIBES.**—Not later than 45 days after the date of the enactment of this Act, the Secretary shall notify, in writing, all potentially eligible tribes that they may opt into the expedited procedure for proposed findings and final determinations under this Act and of the provisions of paragraph (2).

(2) **OPT IN.**—If, not later than 90 days after the date of the enactment of this Act, a potentially eligible tribe notifies the Secretary, in writing, that the potentially eligible tribe elects to opt into the expedited procedures under this Act, the potentially eligible tribe shall be considered an eligible tribe for the purposes of this Act. Potentially eligible tribes shall not be considered eligible tribes for the purposes of this Act if notification is not made by the potentially eligible tribe in accordance with this paragraph.

(d) **NUMBER OF MEMBERS NOT A FACTOR.**—The number of persons listed on the membership roll contained in a petition for Federal recognition of an eligible tribe

shall not be taken into account in considering the petition, except that the Secretary may review the eligibility of individual members or groups listed in a petition in accordance with the provisions of part 83 of title 25, Code of Federal Regulations.

(e) **EFFECT OF FAILURE TO COMPLY.**—If the Secretary fails to publish a proposed finding required by subsection (a) or a final determination required by subsection (b) by the end of the time period required for the proposed finding or final determination by such subsections, the relevant eligible tribe may seek in the appropriate United States district court a determination by the court of whether the eligible tribe should be recognized as an Indian tribe in accordance with the criteria specified in section 83.7 of title 25, Code of Federal Regulations. In any such action, the court shall treat such failure by the Secretary as final agency action.

(f) **REVIEW OF ADVERSE DECISION.**—If the final determination required by subsection (b) refuses to recognize the eligible tribe as an Indian tribe, the eligible tribe may seek, during the one-year period beginning on the date on which the final determination is published, a review of the determination in the appropriate United States district court, notwithstanding the availability of other administrative remedies.

(g) **CONSIDERATION OF OTHER PETITIONS.**—Until the Secretary has published a proposed finding with respect to the petition of each eligible tribe as required under subsection (a), no other petition for recognition as an Indian tribe may be processed except those listed as having a status of “Active” or “In Post-Final Decision Appeal Process” by the Department of the Interior on July 1, 2004.

(h) **NO CHANGE IN CRITERIA.**—Nothing in this Act shall be construed to change the criteria established by the Department of the Interior to determine whether or not a petitioner meets the requirements to be a federally recognized tribe.

(i) **DEFINITIONS.**—For the purposes of this Act, the following definitions apply:

(1) **ELIGIBLE TRIBE.**—The term “eligible tribe” means a tribe that—

(A) has made an initial application for recognition as an Indian tribe to the Department of the Interior before October 17, 1988;

(B) is listed as having a status of “Ready, Waiting for Active Consideration” by the Department of the Interior on July 1, 2004; and

(C) not later than 90 days after the date of the enactment of this Act, notifies the Secretary, in writing, that it opts to have its petition for recognition as an Indian tribe considered under the expedited procedure for proposed findings and final determinations under this Act.

(2) **POTENTIALLY ELIGIBLE TRIBE.**—The term “potentially eligible tribe” means a tribe that—

(A) has made an initial application for recognition as an Indian tribe to the Department of the Interior before October 17, 1988;

(B) is listed as having a status of “Ready, Waiting for Active Consideration” by the Department of the Interior on July 1, 2004; and

(C) has not notified the Secretary, in writing, whether or not it opts to have its petition for recognition as an Indian tribe considered under the expedited procedure for proposed findings and final determinations under this Act.

(3) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior, or a designee of the Secretary.

PURPOSE OF THE BILL

The purpose of H.R. 5134 is to require the prompt review by the Secretary of the Interior of the long-standing petitions for federal recognition of certain Indian tribes, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 5134 seeks to require the Department of the Interior to give a more timely response to certain petitions for federal recognition of Native American Indians as tribes. It prioritizes Departmental resources for acknowledgment and recognition to first be used to process long-standing petitions that were submitted before the enactment of the Indian Gaming Regulatory Act, and have yet to be processed. The bill in no way changes the existing criteria that determine whether a tribe qualifies to be federally recognized.

The decision by the United States government to grant federal recognition to an Indian tribe is the cornerstone of the government-

to-government relationship between the federal government and America's Indian Nation. Only federally-recognized tribes have inherent sovereignty and a unique government-to-government relationship with the United States, as well as many other rights and benefits. It is a very important and serious status.

When the process of acknowledgment and recognition was established at the Department of the Interior, it was widely believed that the process of verifying the accuracy of a petition by a tribe for recognition and whether a tribe met standards for federal recognition would be a thorough but reasonably quick process. According to a January 9, 1977, Department of the Interior memorandum prepared for the Assistant Secretary of Indian Affairs by the Director of the Office of Indian Services, the Department estimated the completion time for an average petition at 195 days, with the potential of reducing this period to 150 days with changes in the regulations prior to finalization. The memo further estimated that each staff member could handle four to six petitions concurrently, and at maximum effort, the Department could process 96 petitions a year.

Obviously these goals set forth by the Department in 1977 have come nowhere near being realized. Many petitioning tribes have waited decades to go through the process, literally seeing generations of elders pass away while still receiving no answer to their petition. The current list of petitioners has tribes that first applied back in the early 1970s, before the process for recognition had even been finalized. Many of these petitioners are still awaiting their answer. Even more discouraging to them is the fact that other tribes who did not even make their first application until the late 1990s have already completed the process and have received decisions on their recognition.

The Committee held a hearing on March 31, 2004, on the tribal recognition process. At this hearing, the Director of the Office of Federal Acknowledgment within the Office of the Assistant Secretary of Indian Affairs testified that there were currently 13 fully documented petitions that were ready and awaiting active consideration by the Department. In the nearly six months that have passed since that hearing, not a single one of the groups that was deemed ready for consideration has moved forward or received a determination. Thus, a tribe such as the St. Francis Abenaki of Vermont, which first applied for recognition on June 14, 1983, and was deemed ready for consideration on January 17, 1996, continues to make no headway towards receiving a determination on their petition. Other witnesses testified how their tribes had waited decades for an answer and had to resort to extraordinary tactics such as litigation against the Department or seeking legislative recognition to break out of the gridlock of the process.

As ordered favorably reported from the Committee on Resources, H.R. 5134 will address the plight of these and other applicants who have had long-standing completed petitions that have yet to be processed by the Department. It will provide that a tribe that made its initial application for recognition prior to October 17, 1988, and whose petition was determined to be ready and waiting consideration by the Department as of July 1, 2004, be eligible for expedited review. Using these criteria, 10 of the 13 aforementioned tribes will be eligible to finally get a "yes" or "no" decision. This

expedited review mandates that the Secretary must make a proposed finding for each eligible petitioner no later than 6 months after enactment, and a final determination no later than one year after enactment. Failure by the Secretary to meet these deadlines shall be deemed a negative final agency action and shall allow the petitioner to seek in United States district court a determination of whether they meet the Department's criteria for recognition as an Indian tribe. Any eligible tribe which chooses to participate in this review must opt in. Furthermore, H.R. 5134 clarifies that nothing in the bill modifies in any way the criteria by which a petitioner is judged to qualify as a tribe.

COMMITTEE ACTION

H.R. 5134 was introduced on September 23, 2004, by Resources Committee Chairman Richard Pombo (R-CA). The bill was referred to the Committee on Resources. No hearing was held on the bill. On September 29, 2004, the Full Resources Committee met to consider the bill. Chairman Pombo offered an amendment in the nature of a substitute. The amendment changed the participation process of eligible tribes from an opt-out process to an opt-in process. The time period for these processes was extended to 45 days from enactment for the Secretary to notify petitioners of their eligibility, and 90 days from enactment for the petitioners to opt in. The amendment also deemed failure to act by the Secretary as final agency action. It was adopted by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 18, 2004.

Hon. RICHARD W. POMBO,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5134, a bill to require the prompt review by the Secretary of the Interior of the long-standing petitions for federal recognition of certain Indian tribes, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mike Waters.

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

H.R. 5134—A bill to require the prompt review by the Secretary of the Interior of the long-standing petitions for federal recognition of certain Indian tribes, and for other purposes

Summary: H.R. 5134 would require the Department of the Interior (DOI) to process and settle certain petitions for official recognition of Indian groups by the federal government. The bill would mandate that the department respond to all 10 eligible petitions within one year of its enactment. Based on information from the Office of Federal Acknowledgement (OFA), CBO expects that current staff of this office is insufficient to meet that deadline. Assuming that the department hires enough new staff to respond to all eligible petitions as rapidly as feasible, COB estimates that implementing H.R. 5134 would cost \$12 million over the 2005–2009 period, subject to appropriation of the necessary amounts.

H.R. 5134 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5134 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	2	5	5	0	0
Estimated Outlays	2	5	5	0	0

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the beginning of 2005 and that DOI would attempt to comply with the deadlines in the bill.

Indian tribes may currently be recognized by the federal government through an act of Congress, DOI administrative procedure, or a decision by a United States court. The usual route to federal recognition is through DOI's administrative process. Federal recognition of an Indian group entitles the group to participate in programs operated for the benefit of Indians mostly by the Bureau of Indian Affairs (BIA) within DOI. It also creates a government-to-government relationship between the tribe and the federal government.

Administrative federal recognition

Numerous tribes are currently at various stages in the administrative process to petition for federal recognition. Ten of those petitions would be covered by the provisions of this bill and would each require both a proposed finding and a final determination of the group's status.

Regulations governing the federal acknowledgment process require a minimum comment period of at least eight months following delivery of a proposed finding. After that, they allow the department 60 days to issue a final determination. Within BIA, OFA reviews and recommends findings on petitions by interested Indian groups for federal recognition. The office currently employs 11 staff members, including three teams of petition researchers, and has recently issued finding at a rate of roughly two proposed findings and three final determinations per year.

H.R. would require DOI to complete all proposed findings within six months of enactment and to complete all final destinations within one year. Because the current regulations require eight months between delivery of a proposed finding and preparation of a final destination, CBO expects that the department probably would be unable to comply with the deadlines in the bill even with additional resources. In that event, the affected tribes could pursue judicial recognition as they may under current law.

To properly evaluate the 10 petitions as expeditiously as possible, the department would need additional personnel. (Such personnel might be a combination of federal and contractor employees.) Based on information from DOI, CBO estimates that OFA would need the equivalent of about 60 personnel for roughly a two-year period to process all eligible petitions. CBO estimates that the additional staff would cost \$12 million over the 2005–2007 period, subject to appropriation of the necessary amounts.

Intergovernmental and private-sector impact: H.R. 5134 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Mike Waters. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Selena Caldera.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

