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HOUSE OF REPRESENTATIVES
REPORT
109–694

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

SEPTEMBER 28, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 512]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 512) to require the prompt review by the Secretary of the Interior of the longstanding petitions for Federal recognition of certain Indian tribes, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 512 is to require the prompt review by the Secretary of the Interior of the longstanding petitions for Federal recognition of certain Indian tribes, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 512 expedites the evaluation of several longstanding petitions for federal acknowledgment and recognition filed by certain Indian groups. Because Article I, Section 8 of the Constitution delegates to Congress plenary authority over commerce with Indian tribes, the federal government's decision to recognize a group as an Indian tribe is a solemn responsibility.

Historically, Indian tribes have been recognized through treaties, Acts of Congress, Executive Orders, rulings by federal courts, and administrative decisions. In 1978, the Bureau of Indian Affairs in the Department of the Interior established a process for acknowledging Indian tribes known as "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," found at 25 Code of Federal Regulations Part 83. In petitioning for recognition under these procedures, a group must establish a substantially con-

tinuous tribal existence and that it has functioned as an autonomous entity throughout history until the present. To meet this standard, a petitioner must meet seven mandatory criteria.

While there is general agreement among experts that the seven mandatory criteria are basically sound, the process of managing and evaluating acknowledgment petitions is fraught with major delays and failure to establish deadlines. When the acknowledgment and recognition regulations were established in 1978, it was widely believed that the process of verifying the accuracy of the petition and whether a tribe met standards for federal recognition would be thorough but reasonably quick. According to a January 9, 1977, Department of 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 4 to 6 petitions concurrently, and at maximum effort, the Department could process 96 petitions per 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 an 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.

Both the Government Accountability Office and the Department acknowledge problems with timeliness in the process and have recommended improvements, such as the establishment of clear time frames and time sensitivity in considering petitions.

No one should have to wait decades for the government to abide by its own regulations to render a decision on a petition. H.R. 512 addresses the lack of clear time frames for several tribes with longstanding, fully documented petitions. Specifically, H.R. 512 enables eligible tribes to obtain a final determination from the Secretary of the Interior on their petitions within one year, and failing that, to obtain a determination from a federal judge. To be eligible, a tribe must have filed its initial petition before October 17, 1988, and fully documented its petition by July 1, 2004. No eligible tribe is required to invoke its right to an expedited decision under this bill; opting in to the process is entirely voluntary on the part of the petitioner.

Significantly, the bill does not change any criteria or standard of review for recognition under the 1978 regulations. Thus, the Secretary will not construe a requirement for rendering a speedy decision to influence the final decision on the merits of the petition.

To ensure the Secretary can marshal the resources necessary to perform an expedited review of tribes who opt to invoke an expedited decision, subsection 1(g) of H.R. 512 puts incomplete and inactive petitions on hold until the Secretary acts on petitions of tribes eligible for an expedited review. It should be emphasized

that under subsection 1(g), petitions listed as "Active" or "In Post-Final Decision Appeal Process" should be processed promptly and fairly by the Department.[1]

A hearing was held on H.R. 512 on February 10, 2005. Testimony was received from the acting Deputy Assistant Secretary for Indian Affairs of the Department of the Interior, the General Accountability Office, an expert on the recognition process, and a witness representing a petitioner seeking recognition.

One issue that came to light in testimony submitted in this hearing is the fact that new petitions for recognition are still being filed by new groups to this day. At present, there are about 250 unresolved petitions on file at the Bureau of Indian Affairs (BIA). The vast majority were filed around the time the 1978 acknowledgment regulations were published in the Federal Register. After 1979, the number of petitions steeply declined, and then began to increase in 1998—the year Congress enacted the Indian Gaming Regulatory Act. And more are being filed today.

According to the Department's testimony, 134 of these 250 letters of petition had no documentation submitted in support of the petitioner's cause. Seventy-one petitions were incomplete because only partial documentation had been submitted. Ten groups were no longer in contact with BIA.

These data indicate that a majority of the petitioners have not followed up with the submission of any documentation—even partial documentation—to demonstrate their claimed status of being an Indian tribe due all the benefits, privileges, services and responsibilities of federal recognized tribes. While no one expects a petitioner to fully document a petition within a short time frame or without a significant amount of resources, some of the petitions lacking any documentation were filed as long ago as 1976.

In light of these facts, the Congress and the Secretary should consider how to deal with petitions that are effectively abandoned. Recognition reaffirms the continuous existence of a sovereign Indian Nation. World history is rife with examples of peoples impatient to declare themselves sovereign, autonomous nations. A measure of a real Indian Nation would be the persistence and pursuit demonstrated by the tribes that meet the criteria for a decision in H.R. 512. The credibility of the BIA is weakened by keeping so many completely inactive and possibly abandoned petitions alive. Petitioners have had 28 years to get acquainted with the BIA process. The aim of H.R. 512 is to expedite decisions on petitions that were filed in an era when information about the regulations was not well-known, and resources needed to begin the process were not readily available. It is reasonable to ask whether a time has arrived to phase out the Secretary's authority to recognize groups who file petitions after enactment of this bill. While it is unreasonable to suggest a petitioner must know how to fully document a petition, it is reasonable to require that a simple letter of intent to petition be filed by a time certain date.

Holding the BIA process open on a permanent basis cheapens the process of being recognized. A number of petitioners are actively

[1] The terms "Active" and "In Post-Final Decision Appeal Process" used in subsection 1(g) refer to the tribes under the respective headings "Active Status" and "In Post-Final Decision Appeal Process" in the "Status Summary of Acknowledgment Cases" maintained by the Bureau of Indian Affairs.

assembling documents, corresponding with the BIA, and earnestly seeking a determination of their status. No one wishes to hinder their efforts. In fact, in almost all of these cases, the initial letter to petition for recognition was sent in a time (which was not many years ago) when information about and knowledge of the process was hard to understand or to ascertain. These conditions hardly exist in this era, when a person has the capability of communicating around the globe at the speed of light.

Although some might say that a sunset is fair to tribes who lack the resources to assemble a documented petition by a time certain date, it is perfectly reasonable to demand that a simple, undocumented letter of petition be sent by a time-certain date.

In any case, imposing a sunset on the authority of the Secretary of the Interior to acknowledge tribes who have not yet filed petitions for recognition has no effect on the ability of anyone to petition Congress. It is appropriate to note here that the regulations at 25 C.F.R. 83 are not specifically authorized by an Act of Congress, and that Congress has the final word on whether to continue this program.

For these foregoing reasons, consideration of amending H.R. 512 on the Floor to include a sunset provision on the Secretary's authority to recognize tribes filing petitions after enactment of the bill is warranted. While an amendment by the Chairman for this purpose was proposed during Committee consideration of the bill, he did not offer it in order to continue a discussion with dissenters of a sunset provision. In all other respects, the bill enjoyed strong bipartisan support.

COMMITTEE ACTION

H.R. 512 was introduced on February 2, 2005, by Chairman Richard W. Pombo (R–CA). The bill was referred to the Committee on Resources. On February 10, 2005, the Full Resources Committee held a hearing on the bill. On June 21, 2006, the Full Resources Committee met to consider the bill. No amendments were offered and the bill was 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, clause 3 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 pre-

pared 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:

H.R. 512—A bill to require the prompt review by the Secretary of the Interior of the longstanding petitions for federal recognition of certain Indian tribes, and for other purposes

Summary: H.R. 512 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 eligible petitions within one year of its enactment. Based on information from DOI, CBO expects that current staff are insufficient to meet that deadline. Assuming that the department hires enough new staff to respond to all eligible petitions as rapidly as feasible, CBO estimates that implementing H.R. 512 would cost about $5 million over the 2007–2011 period, subject to appropriation of the necessary amounts.

H.R. 512 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. Enacting H.R. 512 would have no impact on direct spending or revenues.

Eestimatd cost to the Federal Government: The estimated budgetary impact of H.R. 512 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—				
	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	1	2	2	0	0
Estimated Outlays	1	2	2	0	0

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the beginning of fiscal year 2007 and that the necessary amounts will be appropriated to allow DOI to comply with the deadlines in the bill to the extent possible.

Indian tribes may be recognized by the federal government through an act of the 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 federal programs operated for the benefit of Indians. It also creates a gov-

ernment-to-government relationship between the tribe and the federal government.

Within DOI, the Office of Federal Acknowledgment (OFA) reviews and recommends findings on petitions by interested Indian groups for federal recognition. Once a petitioning group has submitted their documentation and undergone a technical review, OFA lists the group as ready for active consideration. Following the delivery of a proposed finding, regulations governing the federal acknowledgment process require a minimum public comment period of at least 180 days. After that, the department has 60 days to issue a final determination.

H.R. 512 would require DOI to begin active consideration of all petitions on the "ready" list filed prior to 1988. As of February 2006, nine petitions were listed as ready for consideration by DOI, and seven of those would be covered by the provisions of this bill. The bill would require the department to complete all proposed findings within six months of the bill's enactment and complete all final determinations within one year for these groups. Because the current regulations require at least eight months between delivery of a proposed finding and preparation of a final determination, CBO expects that DOI might 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 seven affected petitions as expeditiously as possible, in addition to eligible petitions currently under active consideration, the department would need additional research personnel. OFA currently employs four three-member research teams that each produce roughly one proposed finding and one final determination per year. CBO estimates that OFA would need to hire about 15 personnel for roughly a two-year period toprocess all eligible petitions under H.R. 512. CBO estimates that the additional staff would cost about $5 million for salaries and training over the 2007–2009 period, subject to appropriation ofthe necessary amounts.

Expediting the recognition process may also cause some groups to be eligible for programs operated for the benefit of Indians earlier than would otherwise have occurred in absence of the proposed legislation. CBO does not have enough information on the likelihood of recognition for the eligible petitions to estimate a cost for this effect. Any such additional costs would be subject to the availability of appropriated funds.

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: Daniel Hoople. Impact on State, Local, and Tribal Governments: Marjorie Miller. Impact on the Private Sector: Tyler Kruzich.

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

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH HOUSE RESOLUTION 1000

This bill and report contains no provisions which require disclosure under this authority.

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.

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