

LITTLE SHELL TRIBE OF CHIPPEWA INDIANS
RESTORATION ACT OF 2018

SEPTEMBER 10, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 3764]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3764) to extend the Federal recognition to the Little Shell Tribe of Chippewa Indians of Montana, 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. SHORT TITLE.

This Act may be cited as the “Little Shell Tribe of Chippewa Indians Restoration Act of 2018”.

SEC. 2. DEFINITIONS.

In this Act:

- (1) MEMBER.—The term “member” means an individual who is enrolled in the Tribe pursuant to section 6.
- (2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (3) TRIBE.—The term “Tribe” means the Little Shell Tribe of Chippewa Indians of Montana.

SEC. 3. FEDERAL RECOGNITION.

(a) IN GENERAL.—Federal recognition is extended to the Tribe.

(b) EFFECT OF FEDERAL LAWS.—Except as otherwise provided in this Act, all Federal laws (including regulations) of general application to Indians and Indian tribes, including the Act of June 18, 1934 (25 U.S.C. 5101 et seq.) (commonly known as the “Indian Reorganization Act”), shall apply to the Tribe and members.

SEC. 4. FEDERAL SERVICES AND BENEFITS.

(a) IN GENERAL.—Beginning on the date of enactment of this Act, the Tribe and each member shall be eligible for all services and benefits provided by the United States to Indians and federally recognized Indian tribes, without regard to—

- (1) the existence of a reservation for the Tribe; or

(2) the location of the residence of any member on or near an Indian reservation.

(b) SERVICE AREA.—For purposes of the delivery of services and benefits to members, the service area of the Tribe shall be considered to be the area comprised of Blaine, Cascade, Glacier, and Hill Counties in the State of Montana.

SEC. 5. REAFFIRMATION OF RIGHTS.

(a) IN GENERAL.—Nothing in this Act diminishes any right or privilege of the Tribe or any member that existed before the date of enactment of this Act.

(b) CLAIMS OF TRIBE.—Except as otherwise provided in this Act, nothing in this Act alters or affects any legal or equitable claim of the Tribe to enforce any right or privilege reserved by, or granted to, the Tribe that was wrongfully denied to, or taken from, the Tribe before the date of enactment of this Act.

SEC. 6. MEMBERSHIP ROLL.

(a) IN GENERAL.—As a condition of receiving recognition, services, and benefits pursuant to this Act, the Tribe shall submit to the Secretary, by not later than 18 months after the date of enactment of this Act, a membership roll consisting of the name of each individual enrolled as a member of the Tribe.

(b) DETERMINATION OF MEMBERSHIP.—The qualifications for inclusion on the membership roll of the Tribe shall be determined in accordance with sections 1 through 3 of article 5 of the constitution of the Tribe dated September 10, 1977 (including amendments to the constitution).

(c) MAINTENANCE OF ROLL.—The Tribe shall maintain the membership roll under this section.

SEC. 7. ACQUISITION OF LAND.

(a) HOMELAND.—The Secretary shall acquire, for the benefit of the Tribe, trust title to 200 acres of land within the service area of the Tribe to be used for a tribal land base.

(b) ADDITIONAL LAND.—The Secretary may acquire additional land for the benefit of the Tribe pursuant to section 5 of the Act of June 18, 1934 (25 U.S.C. 5108) (commonly known as the “Indian Reorganization Act”).

PURPOSE OF THE BILL

The purpose of H.R. 3764 is to extend federal recognition to the Little Shell Tribe of Chippewa Indians of Montana.

BACKGROUND AND NEED FOR LEGISLATION

Under Article I, Section 3, Clause 3 of the Constitution, Congress has what the Supreme Court characterizes as plenary and exclusive authority over federal Indian affairs. Nonetheless, the Department of the Interior, without authorization from Congress, implemented its own rules for the recognition of tribes not previously recognized by Congress. These rules are codified in 25 C.F.R. Part 83 and administered by the Office of Federal Acknowledgment within the Department of the Interior.

To reclaim Congress’s tribal recognition power from the Executive Branch, Chairman Rob Bishop introduced H.R. 3744, the Tribal Recognition Act. This legislation would establish a statutory framework for the recognition of tribes in accordance with Congress’s plenary power over Indian affairs. It was ordered favorably reported by the Natural Resources Committee on June 13, 2018. Under the process authorized by H.R. 3744, groups seeking federal recognition as Indian tribes would submit their petitions and all supporting documentary evidence to the Department of the Interior. The Department would then process and review the petitions under specific standards and criteria largely the same as those which the Office of Acknowledgment used before the standards and criteria were relaxed by the Obama Administration in 2015. The Department would submit its completed review to the

Committees on Natural Resources of the House and Indian Affairs of the Senate, with Congress making any final decision.

Consistent with Congress's prerogative to consider whether to recognize new tribes, H.R. 3764 would extend recognition to the Little Shell Tribe of Montana. According to the Little Shell, the Tribe originally petitioned the federal government for reorganization in the 1930s and 1940s under the Act of June 18, 1934, commonly known as the Indian Reorganization Act.¹ At the time, the federal government concluded that Little Shell tribal members were eligible for and should be provided with trust land, thereby making the Tribe eligible for reorganization under the Indian Reorganization Act. Due to a lack of federal appropriations during the Depression, the Bureau lacked adequate financial resources to purchase land for the Tribe, and the Little Shell people were thereby denied the opportunity to reorganize.²

The Tribe, together with the Turtle Mountain Band of Chippewa of North Dakota, and the Chippewa-Cree Tribe of the Rocky Boy's Reservation of Montana, filed claims under the Indian Claims Commission Act of 1946³ for additional compensation for lands ceded to the United States by an 1863 treaty and the 1892 McCumber Agreement.⁴ These tribes received Indian Claims Commission (ICC) awards, which were distributed under 1971 and 1982 Acts of Congress.⁵ However, it should be noted that neither the ICC Act nor the Indian Reorganization Act provides a basis for the recognition of tribes. The ICC Act generally required the Commission to hear certain categories of claims from tribes and other identifiable groups of American Indians.⁶

The Little Shell group has long pursued federal recognition through the Department of the Interior's administrative process beginning with the submission of an initial letter of intent to petition in 1978, the same year the Department established its administrative recognition rules. In 2009, the Department declined to recognize the Little Shell as a tribe.⁷ The Department explained that the petitioner failed to satisfy three of seven mandatory criteria necessary to be recognized under the Part 83 rules in effect at the time. The three criteria the group failed to satisfy are: has been identified as an Indian entity on a substantially continuous basis at least since 1900; comprised a distinct community since historical times and maintain significant social relationships and interaction as part of a distinct community; and has maintained political influence over a community of its members or over communities that combined into the petitioner.⁸

The Clinton Administration's handling of the Little Shell recognition petition and that of five other groups were the subject of a formal investigation by the Department's Inspector General. The Inspector General issued a report revealing misconduct by several political appointees, who reversed the findings of career experts that

¹ 25 U.S.C. 5101 et seq.

² U.S. Department of the Interior letter to U.S. Senator Burton K. Wheeler (D-MT). May 29, 1940.

³ 60 Stat. 1050.

⁴ *TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS et al. v. The UNITED STATES*. United States Court of Claims. January 23, 1974. 490 F.2d 935,938.

⁵ See Public Law 92-59, 85 Stat. 158 (1971) and Public Law 97-403, 96 Stat. 2022 (1982).

⁶ Act of Aug. 13, 1946, ch. 959, sec. 2, 60 Stat. 1050.

⁷ https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/031_litshl_MT/031_fd_fr.pdf

⁸ https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/031_litshl_MT/031_fd_pr.pdf

these groups (including Little Shell) were not tribes under the Department's regulations.⁹ The Secretary of the Interior appointed by President George W. Bush reconsidered the Little Shell petition and in 2009, as has been noted, the Department issued its final determination reflecting the career staff's verdict that the group failed to meet necessary criteria to be accorded federal recognition as a tribe.

The Little Shell subsequently appealed the Department's final determination against recognizing the Tribe to the Interior Board of Indian Appeals (IBIA). In 2013, the IBIA affirmed the Department's final determination, but referred certain issues raised by the Tribe to the Secretary for further consideration.¹⁰

In 2015, the Department made significant revisions to its recognition regulations, allowing the Tribe to re-petition for recognition under the revised standards and criteria.¹¹ According to the BIA, the Tribe has not yet supplemented its documented petition under the 2015 regulations.¹²

At the same time the Little Shell Tribe continues to pursue recognition from the BIA, it is seeking legislative recognition from Congress.

It is the Committee's view that Members of the House should have a reasonable basis for rendering a decision on extending federal recognition to the Little Shell Tribe, consistent with the principles and framework set forth in H.R. 3744, Chairman Bishop's tribal recognition reform legislation. The Little Shell Tribe's petition for recognition under the pre-2015 recognition standards has undergone a substantially complete review by the Department. Details of the Little Shell's documented petition, with findings and conclusions made by Department staff, are publicly available for Members of Congress to review for them to make a decision, informed by expert analysis of documented evidence, on whether federal recognition of the Little Shell Tribe is warranted.¹³ Recognition is a political question, and thus Members are not formally bound by opinion of the Department, though Members are advised to weigh any recommendation of the Department carefully.

Gaming

H.R. 3764, as ordered reported, contains no provision relating to gaming. In general, Section 20 of the Indian Gaming Regulatory Act of 1988 (IGRA)¹⁴ prohibits gaming on lands acquired in trust for a tribe after 1988. Section 20 of IGRA, however, contains several exceptions to this prohibition. One of these exceptions is the so-called "two-part determination" requiring the concurrence of the governor of the State in which the tribe would run a casino. This two-part determination exception would be available for the Little Shell Tribe to operate a casino on lands placed in trust for its ben-

⁹U.S. Department of the Interior Inspector General (2002), "Allegations Involving Irregularities in the Tribal Recognition Process and Concerns Related to Indian Gaming," Investigative Report No. 01-I-00329. <https://www.gpo.gov/fdsys/pkg/GPO-DOI-IGREPORTS-01-i-00329/pdf/GPO-DOI-IGREPORTS-01-i-00329.pdf>

¹⁰https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/031_litshl_MT/031_57ibia101.pdf

¹¹https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/031_litshl_MT/031_letter_20160630.PDF

¹²<https://www.bia.gov/as-ia/ofa/031-litshl-mt>

¹³https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/031_litshl_MT/031_fd.pdf

¹⁴25. U.S.C. 2719.

efit. It is unclear if another exception in Section 20 of IGRA, such as the land claim exception¹⁵ might additionally apply to the Tribe and its lands.

Previous Congressional action

In the 114th Congress, the Committee held a hearing on a substantially similar bill, H.R. 286, on September 29, 2015.¹⁶ On September 8, 2016, the Committee included the text of H.R. 286 in the amendment in the nature of a substitute to H.R. 3764, the Tribal Recognition Act of 2016. H.R. 3764, as amended, was favorably reported by a roll call vote of 23 yeas and 13 nays.¹⁷

SECTION-BY-SECTION ANALYSIS OF THE BILL AS ORDERED REPORTED

Section 1. Short title

This Act may be cited as the Little Shell Tribe of Chippewa Indians Restoration Act of 2018.

Section 2. Definitions

This section defines terms used in the Act.

Section 3. Federal recognition

Federal recognition is extended to the Tribe and all federal laws (including regulations) of general application to Indians and Indian tribes, including the Indian Reorganization Act, shall apply to the Tribe and members.

Section 4. Federal services and benefits

Beginning on the date of enactment of this Act, full eligibility for all services and benefits provided by the federal government shall be extended to the Tribe and members, without regard to (1) the existence of a reservation for the Tribe; or (2) the location of the residence of a member on or near an Indian reservation. The service area of the Tribe shall be the area comprised of Blaine, Cascade, Glacier, and Hill Countries in the State of Montana.

Section 5. Reaffirmation of rights

This Act shall not diminish any right or privilege of the Tribe that existed before the date of enactment.

Section 6. Membership roll

The Tribe shall submit a membership roll to the Secretary within 18 months of enactment. Determination of the roll shall be in accordance with the Tribal constitution dated September 10, 1977 (including amendments).

Section 7. Acquisition of land

The Secretary shall acquire trust title to 200 acres of land within the service area of the Tribe to be used for tribal land base. The Secretary may acquire additional land for the benefit of the Tribe pursuant to section 5 of the Indian Reorganization Act.

¹⁵ 25 U.S.C. 2719(b)(1)(B)(i).

¹⁶ <http://www.lis.gov/cgi-lis/bdquery/D?d114:1:/temp/bd9BgU:@@X:dbs=n://www.lis.gov/billsumm/billsumm.php?id=2>

¹⁷ H. Report 114-847.

COMMITTEE ACTION

H.R. 3764 was introduced on September 13, 2017, by Congressman Greg Gianforte (R-MT). The bill was referred to the Committee on Natural Resources and within the Committee to the Subcommittee on Indian, Insular, and Alaska Native Affairs. On July 11, 2018, the Committee on Natural Resources met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Rob Bishop (R-UT) offered an amendment designated #1; it was adopted by unanimous consent. No further amendments were offered, and the bill, as amended, was ordered favorably reported to the House of Representatives by unanimous consent.

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 Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 3, 2018.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3764, the Little Shell Tribe of Chippewa Indians Restoration Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Robert Reese (for Bureau of Indian Affairs programs), and Robert Stewart (for Indian Health Service programs).

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3764—Little Shell Tribe of Chippewa Indians Restoration Act of 2018

Summary: H.R. 3764 would provide federal recognition to the Little Shell Tribe of Chippewa Indians of Montana. Federal recognition would make the tribe eligible to receive benefits from various federal programs.

CBO estimates that implementing this legislation would cost \$37 million over the 2019–2023 period, assuming appropriation of the

necessary amounts. Enacting H.R. 3764 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3764 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 3764 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by exempting some lands from taxation by state and local governments, but CBO estimates the cost of the mandate would be small and well below the threshold established in that act (\$80 million in 2018, adjusted annually for inflation).

H.R. 3764 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 3764 is shown in the following table. The costs of the legislation fall within budget functions 450 (community and regional development) and 550 (health).

	By fiscal year, in millions of dollars—						2019– 2023
	2018	2019	2020	2021	2022	2023	
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Department of the interior:							
Estimated Authorization Level	0	3	3	3	4	4	17
Estimated Outlays	0	2	3	3	4	4	16
Indian Health Service:							
Estimated Authorization Level	0	4	4	4	4	5	22
Estimated Outlays	0	4	4	4	4	5	21
Total Changes:							
Estimated Authorization Level	0	7	7	8	8	8	39
Estimated Outlays	0	6	7	7	8	9	37

Components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that H.R. 3764 will be enacted near the end of 2018 and that the necessary amounts will be appropriated for each year beginning in 2019.

Providing federal recognition to the Little Shell Tribe of Chippewa Indians of Montana would allow the tribe and about 2,600 tribal members to receive benefits under various programs administered by the Department of the Interior (DOI) and the Indian Health Service (IHS). Based on the average per capita expenditures by those agencies for other Indian tribes, CBO estimates that implementing H.R. 3764 would cost \$37 million over the 2019–2023 period.

Department of the Interior

DOI, primarily through the Bureau of Indian Affairs, provides funding to federally recognized tribes for various purposes, including child welfare services, adult care, community development, and general assistance. Based on current per capita expenditures of around \$1,200 for other federally recognized tribes in the central states and accounting for anticipated inflation, CBO estimates that providing those services would cost \$16 million over the 2019–2023 period.

Indian Health Service

H.R. 3764 also would make members of the tribe eligible for health benefits. Using information from the IHS, CBO estimates that about 55 percent of the tribe's members—or about 1,400 people—would receive benefits each year. CBO expects that the per capita cost would be similar to the costs for current IHS beneficiaries—about \$2,680 in 2017. Accounting for anticipated inflation, CBO estimates, providing those benefits would cost \$21 million over the 2018–2022 period.

Other Federal agencies

In addition to DOI and IHS funding, certain Indian tribes also receive support from other federal programs within the Department of Agriculture, Education, Housing and Urban Development, and Labor. Because the tribe is currently recognized by the state of Montana, it already receives funding from those departments. Thus, CBO estimates that enacting H.R. 3764 would not increase costs for that support.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 3764 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 3764 contains an intergovernmental mandate as defined in UMRA because it would authorize the Secretary of Interior to acquire and take into trust 200 acres of land for the Little Shell Tribe. Because that land would be exempt from state and local taxes, the provision would impose an intergovernmental mandate. Given the small amount of land, CBO estimates that the forgone tax revenue to state and local governments would be small and well below the threshold established for intergovernmental mandates (\$80 million in 2018, adjusted annually for inflation).

H.R. 3764 contains no private-sector mandates as defined in UMRA.

Previous CBO estimate: On February 21, 2017, CBO transmitted an estimate for S. 39, the Little Shell Tribe of Chippewa Indians Restoration Act of 2017, as ordered reported by the Senate Committee on Indian Affairs on February 8, 2017. The two bills are similar and the differences in CBO's estimates of their costs stem from the different periods for which the costs were estimated.

Estimate prepared by: Federal costs: Robert Reese (Bureau of Indian Affairs); Robert Stewart (Indian Health Service); Mandates: Rachel Austin.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; Susan Willie, Chief, Mandates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to extend federal recognition to the Little Shell Tribe of Chippewa Indians of Montana.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

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 to existing law.

