

106TH CONGRESS
1ST SESSION

H. R. 361

To provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1999

Mr. FALEOMAVAEGA (for himself and Mr. MCINTYRE) introduced the following bill; which was referred to the Committee on Resources

A BILL

To provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes.

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 “Indian Federal Rec-
5 ognition Administrative Procedures Act of 1998”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to establish an administrative procedure to
9 extend Federal recognition to certain Indian groups;

1 (2) to extend to Indian groups which are deter-
2 mined to be Indian tribes the protection, services,
3 and benefits available from the Federal Government
4 pursuant to the Federal trust responsibility;

5 (3) to extend to Indian groups which are deter-
6 mined to be Indian tribes the immunities and privi-
7 leges available to other acknowledged Indian tribes
8 by virtue of their status as Indian tribes with a gov-
9 ernment-to-government relationship with the United
10 States;

11 (4) to ensure that when the Federal Govern-
12 ment extends acknowledgment to an Indian tribe, it
13 does so with a consistent legal, factual, and histori-
14 cal basis;

15 (5) to establish a commission which will act in
16 a supporting role to petitioning groups applying for
17 recognition;

18 (6) to provide clear and consistent standards of
19 administrative review of documented petitions for ac-
20 knowledge;

21 (7) to clarify evidentiary standards and expedite
22 the administrative review process by providing ade-
23 quate resources to process petitions; and

1 (8) to remove the acknowledgment process from
2 the Bureau of Indian Affairs and invest it in the
3 Commission on Indian Recognition.

4 **SEC. 3. DEFINITIONS.**

5 For purposes of this Act:

6 (1) **ACKNOWLEDGMENT; ACKNOWLEDGED.**—

7 The term “acknowledgment” or “acknowledged”
8 means a determination by the Commission on Indian
9 Recognition that an Indian group constitutes an In-
10 dian tribe with a government-to-government relation-
11 ship with the United States, and whose members are
12 recognized as eligible for the special programs and
13 services provided by the United States to Indians be-
14 cause of their status as Indians.

15 (2) **BUREAU.**—The term “Bureau” means the
16 Bureau of Indian Affairs.

17 (3) **COMMISSION.**—The term “Commission”
18 means the Commission on Indian Recognition estab-
19 lished pursuant to section 4.

20 (4) **COMMUNITY.**—The term “community”
21 means any group of people which, in the context of
22 the history, geography, culture, and social organiza-
23 tion of the group, sustains consistent interactions
24 and significant social relationships within its mem-

1 bership and whose members are differentiated from
2 and identified as distinct from nonmembers.

3 (5) CONTINUOUSLY; CONTINUOUS.—The term
4 “continuously” or “continuous” means extending
5 from the given date to the present substantially
6 without interruption; proof of any matter required
7 shall be deemed without substantial interruption if
8 such proof is available at least for every fifth year.

9 (6) DEPARTMENT.—The term “Department”
10 means the Department of the Interior.

11 (7) DOCUMENTED PETITION.—The term “docu-
12 mented petition” means the detailed, factual expo-
13 sition and arguments, including all documentary evi-
14 dence, necessary to demonstrate that arguments spe-
15 cifically address the mandatory criteria established
16 in section 5.

17 (8) HISTORICAL; HISTORICALLY.—The term
18 “historical” or “historically” means dating from
19 first sustained contact with non-Indians.

20 (9) INDIAN GROUP; GROUP.—The term “Indian
21 group” or “group” means any Indian or Alaska Na-
22 tive tribe, band, pueblo, village or community within
23 the United States that the Secretary does not ac-
24 knowledge to be an Indian tribe.

1 (10) INDIAN TRIBE; TRIBE.—The term “Indian
2 tribe” or “tribe” means any Indian or Alaska Native
3 tribe, band, pueblo, village or community within the
4 United States included on the Secretary’s annual list
5 of acknowledged tribes.

6 (11) INDIGENOUS.—The term “indigenous”
7 means native to the United States in that at least
8 part of the petitioner’s traditional territory extended
9 into what is now within the boundaries of the United
10 States.

11 (12) LETTER OF INTENT.—The term “letter of
12 intent” means an undocumented letter or resolution
13 which is dated and signed by the governing body of
14 an Indian group and submitted to the Commission
15 indicating the group’s intent to submit a petition for
16 acknowledgment as an Indian tribe.

17 (13) MEMBER OF AN INDIAN GROUP.—The
18 term “member of an Indian group” means an indi-
19 vidual who is recognized by an Indian group as
20 meeting its membership criteria.

21 (14) MEMBER OF AN INDIAN TRIBE.—The term
22 “member of an Indian tribe” means an individual
23 who—

24 (A) meets the membership requirements of
25 the tribe as set forth in its governing document;

1 (B) in the absence of a governing docu-
2 ment which sets out these requirements, has
3 been recognized as a member collectively by
4 those persons comprising the tribal governing
5 body and has consistently maintained tribal re-
6 lations with the tribe; or

7 (C) is listed on the tribal membership rolls
8 as a member, if such rolls are kept.

9 (15) PETITION.—The term “petition” means a
10 petition for acknowledgment submitted or trans-
11 ferred to the Commission pursuant to section 5.

12 (16) PETITIONER.—The term “petitioner”
13 means any group which has submitted a petition or
14 letter of intent to the Commission requesting ac-
15 knowledgment as an Indian tribe or has a petition
16 or letter of intent transferred to the Commission
17 under section 5(a).

18 (17) PREVIOUS FEDERAL ACKNOWLEDG-
19 MENT.—The term “previous Federal acknowledg-
20 ment” means any action by the Federal Government
21 the character of which is clearly premised on identi-
22 fication of a tribal political entity and clearly indi-
23 cates the recognition of a government-to-government
24 relationship between that entity and the Federal
25 Government.

1 (18) RESTORATION.—The term “restoration”
2 means the reextension of acknowledgment to any
3 previously acknowledged tribe which may have had
4 its acknowledged status abrogated or diminished by
5 reason of congressional legislation expressly termi-
6 nating that status.

7 (19) SECRETARY.—The term “Secretary”
8 means the Secretary of the Interior.

9 (20) TREATY.—The term “treaty” means any
10 treaty—

11 (A) negotiated and ratified by the United
12 States on or before March 3, 1871, with, or on
13 behalf of, any Indian group or Indian tribe;

14 (B) made by any government with, or on
15 behalf of, any Indian group or Indian tribe,
16 from which Federal Government subsequently
17 acquired territory by purchase, conquest, annex-
18 ation, or cession; or

19 (C) negotiated by the United States with,
20 or on behalf of, any Indian group, whether or
21 not the treaty was subsequently ratified.

22 (21) TRIBAL ROLL.—The term “tribal roll”
23 means a list exclusively of those individuals who
24 have been determined by the tribe to meet the tribe’s
25 membership requirements as set forth in its govern-

1 ing document or, in the absence of a governing docu-
2 ment setting forth those requirements, have been
3 recognized as members by the tribe’s governing
4 body. In either case, those individuals on a tribal roll
5 must have affirmatively demonstrated consent to
6 being listed as members.

7 (22) UNITED STATES.—The term “United
8 States” means the 48 contiguous States, Alaska,
9 and Hawaii; and does not include territories or pos-
10 sessions.

11 **SEC. 4. COMMISSION ON INDIAN RECOGNITION.**

12 (a) ESTABLISHMENT.—There is established within
13 the Department of the Interior the Commission on Indian
14 Recognition. The Commission shall report directly to the
15 Assistant Secretary of Indian Affairs.

16 (b) MEMBERSHIP.—

17 (1) IN GENERAL.—(A) The Commission shall
18 consist of 3 members appointed by the Secretary.

19 (B) In making appointments to the Commis-
20 sion, the Secretary shall give careful consideration
21 to—

22 (i) recommendations received from Indian
23 tribes;

24 (ii) recommendations from Indian groups
25 and professional organizations; and

1 (iii) individuals who have a background in
2 Indian law or policy, anthropology, or history.

3 (2) AFFILIATIONS.—

4 (A) No more than 2 members of the Com-
5 mission may be members of the same political
6 party.

7 (B) No more than 1 member of the Com-
8 mission may be an employee of the Department
9 of the Interior.

10 (3) TERMS.—(A) Each member of the Commis-
11 sion shall be appointed for a term of 4 years, except
12 as provided in subparagraph (B).

13 (B) As designated by the Secretary at the time
14 of appointment, of the members first appointed—

15 (i) 1 shall be appointed for a term of 2
16 years;

17 (ii) 1 shall be appointed for a term of 3
18 years; and

19 (iii) 1 shall be appointed for a term of 4
20 years.

21 (4) VACANCY.—Any vacancy in the Commission
22 shall not affect its powers, but shall be filled in the
23 same manner in which the original appointment was
24 made. Any member appointed to fill a vacancy oc-
25 ccurring before the expiration of the term for which

1 the member's predecessor was appointed shall be ap-
2 pointed only for the remainder of that term. A mem-
3 ber may serve after the expiration of that member's
4 term until a successor has taken office.

5 (5) COMPENSATION.—(A) Each member of the
6 Commission not otherwise employed by the United
7 States Government shall receive compensation at a
8 rate equal to the daily equivalent of the annual rate
9 of basic pay prescribed for level V of the Executive
10 Schedule under section 5316 of title 5, United
11 States Code, for each day, including traveltime, such
12 member is engaged in the actual performance of du-
13 ties authorized by the Commission.

14 (B) Except as provided in subparagraph (C), a
15 member of the Commission who is otherwise an offi-
16 cer or employee of the United States Government
17 shall serve on the Commission without additional
18 compensation, but such service shall be without
19 interruption or loss of civil service status or privi-
20 lege.

21 (C) All members of the Commission shall be re-
22 imbursed for travel and per diem in lieu of subsist-
23 ence expenses during the performance of duties of
24 the Commission while away from home or their reg-

1 ular place of business, in accordance with subchapter
2 I of chapter 57 of title 5, United States Code.

3 (6) CHAIRPERSON.—At the time appointments
4 are made under paragraph (1), the Secretary shall
5 designate 1 of such appointees as Chairperson of the
6 Commission.

7 (c) MEETINGS AND PROCEDURES.—

8 (1) INITIAL MEETING.—The Commission shall
9 hold its first meeting no later than 30 days after the
10 date on which all initial members of the Commission
11 have been appointed.

12 (2) QUORUM.—2 members of the Commission
13 shall constitute a quorum for the transaction of
14 business.

15 (3) RULES.—The Commission may adopt such
16 rules (consistent with the provisions of this Act) as
17 may be necessary to establish its procedures and to
18 govern the manner of its operations, organization,
19 and personnel.

20 (4) PRINCIPAL OFFICE.—The principal office of
21 the Commission shall be in the District of Columbia.

22 (d) DUTIES.—The Commission shall carry out the
23 duties assigned to the Commission by this Act, and shall
24 meet the requirements imposed on the Commission by this
25 Act.

1 (e) POWERS AND AUTHORITIES.—

2 (1) CHAIRMAN.—Subject to such rules and reg-
3 ulations as may be adopted by the Commission, the
4 Chairman of the Commission is authorized to—

5 (A) appoint, terminate, and fix the com-
6 pensation (without regard to the provisions of
7 title 5, United States Code, governing appoint-
8 ments in the competitive service, and without
9 regard to the provisions of chapter 51 and sub-
10 chapter III of chapter 53 of such title, or of
11 any other provision of law, relating to the num-
12 ber, classification, and General Schedule rates)
13 of an Executive Director of the Commission and
14 of such other personnel as the Chairman deems
15 advisable to assist in the performance of the
16 duties of the Commission, at a rate not to ex-
17 ceed a rate equal to the daily equivalent of the
18 annual rate of basic pay prescribed for level V
19 of the Executive Schedule under section 5316
20 of title 5, United States Code; and

21 (B) procure, as authorized by section
22 3109(b) of title 5, United States Code, tem-
23 porary and intermittent services to the same ex-
24 tent as is authorized by law for agencies in the
25 executive branch, but at rates not to exceed the

1 daily equivalent of the annual rate of basic pay
2 prescribed for level V of the Executive Schedule
3 under section 5316 of such title.

4 (2) COMMISSION.—The Commission may—

5 (A) hold such hearings and sit and act at
6 such times;

7 (B) take such testimony;

8 (C) have such printing and binding done;

9 (D) enter into such contracts and other ar-
10 rangements, subject to the availability of funds;

11 (E) make such expenditures;

12 (F) secure directly from any officer, de-
13 partment, agency, establishment, or instrumen-
14 tality of the Federal Government such informa-
15 tion as the Commission may require for the
16 purpose of this Act, and each such officer, de-
17 partment, agency, establishment, or instrumen-
18 tality is authorized and directed to furnish, to
19 the extent permitted by law, such information,
20 suggestions, estimates, and statistics directly to
21 the Commission, upon request made by the
22 Chairman of the Commission;

23 (G) use the United States mails in the
24 same manner and under the same conditions as

1 other departments and agencies of the United
2 States; and

3 (H) take such other actions as the Com-
4 mission may deem advisable to carry out its du-
5 ties.

6 (3) MEMBERS.—Any member of the Commis-
7 sion may administer oaths or affirmations to wit-
8 nesses appearing before the Commission.

9 (f) ASSISTANCE FROM OTHER FEDERAL AGEN-
10 CIES.—Upon the request of the Chairman of the Commis-
11 sion, the head of any Federal department, agency, or in-
12 strumentality is authorized to make any of the facilities
13 and services of such department, agency, or instrumental-
14 ity available to the Commission and detail any of the per-
15 sonnel of such department, agency, or instrumentality to
16 the Commission, on a nonreimbursable basis, to assist the
17 Commission in carrying out its duties under this section.

18 (g) TERMINATION OF COMMISSION.—The Commis-
19 sion shall terminate 12 years after the date of the enact-
20 ment of this Act.

21 (h) FEDERAL ADVISORY COMMITTEE ACT.—The pro-
22 visions of the Federal Advisory Committee Act shall not
23 apply to the Commission.

1 **SEC. 5. PETITIONS FOR RECOGNITION AND LETTERS OF IN-**
2 **TENT.**

3 (a) IN GENERAL.—

4 (1) SUBMISSION.—Any Indian group may sub-
5 mit to the Commission a petition requesting that the
6 Commission recognize that the Indian group is an
7 Indian tribe.

8 (2) HEARING.—Indian groups that have been
9 denied or refused recognition as an Indian tribe
10 under regulations prescribed by the Secretary shall
11 be entitled to an adjudicatory hearing, under section
12 9 of this Act, before the Commission. For purposes
13 of the adjudicatory hearing, the Assistant Sec-
14 retary's final determination shall be considered a
15 preliminary determination under section 8(b)(1)(B)
16 of this Act.

17 (3) GROUPS AND ENTITIES EXCLUDED.—The
18 provisions of this Act do not apply to the following
19 groups or entities, which shall not be eligible for rec-
20 ognition under this Act—

21 (A) Indian tribes, organized bands, pueb-
22 los, communities, and Alaska Native entities
23 which are recognized by the Secretary as of the
24 date of enactment of this Act as eligible to re-
25 ceive services from the Bureau;

1 (B) splinter groups, political factions, com-
2 munities, or groups of any character which sep-
3 arate from the main body of an Indian tribe
4 that, at the time of such separation, was recog-
5 nized as being an Indian tribe by the Secretary,
6 unless it can be clearly established that the
7 group, faction, or community has functioned
8 throughout history until the date of such peti-
9 tion as an autonomous Indian group; and

10 (C) any Indian group whose relationship
11 with the Federal Government was expressly ter-
12 minated by an Act of Congress.

13 (4) TRANSFER OF PETITIONS.—(A) No later
14 than 30 days after the date on which all of the ini-
15 tial members of the Commission have been ap-
16 pointed, the Secretary shall transfer to the Commis-
17 sion all petitions pending before the Department.
18 The Secretary shall also transfer all letters of intent
19 previously received by the Department that request
20 the Secretary, or the Federal Government, to recog-
21 nize or acknowledge an Indian group as an Indian
22 tribe.

23 (B) On the date of such transfer, the Secretary
24 and the Department shall cease to have any author-
25 ity to recognize or acknowledge, on behalf of the

1 Federal Government, any Indian group as an Indian
2 tribe.

3 (C) Petitions and letters of intent transferred
4 to the Commission under subparagraph (A) of this
5 paragraph shall, for purposes of this Act, be consid-
6 ered as having been submitted to the Commission in
7 the same order as they were submitted to the De-
8 partment.

9 (b) PETITION FORM AND CONTENT.—Except as oth-
10 erwise provided in this section, any petition submitted
11 under subsection (a) by an Indian group shall be in any
12 readable form that clearly indicates that the petition is
13 requesting the Commission to recognize the petitioning In-
14 dian group as an Indian tribe. Each petition shall contain
15 specific evidence establishing the following mandatory cri-
16 teria:

17 (1) The petitioner has been identified as an
18 American Indian entity on a substantially continu-
19 ous basis since 1934.

20 (A) Evidence to be relied upon in deter-
21 mining a group's Indian identity may include 1
22 or a combination of the following, as well as
23 other evidence of identification by other than
24 the petitioner itself or its members. Proof of

any 1 of the following for a given time is conclusive evidence of Indian identity for that time.

(i) Identification as an Indian entity by Federal authorities.

(ii) Relationships with State governments based on identification of the group as Indian.

(iii) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(iv) Identification as an Indian entity by anthropologists, historians, or other scholars.

(v) Identification as an Indian entity in newspapers and books.

(vi) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or State Indian organizations.

(B) A petitioner may establish that, for any given period of time for which evidence of identification as Indian is lacking, such absence of evidence corresponds in time with official acts of the Federal or relevant State government which prohibited or penalized the expres-

1 sion of Indian identity. For such periods of
2 time, the absence of evidence identifying the pe-
3 titioner as an Indian entity shall not be the
4 basis for declining to acknowledge the peti-
5 tioner.

6 (2) A predominant portion of the petitioning
7 groups comprises a distinct community and has ex-
8 isted as a community on a substantially continuous
9 basis since 1934.

10 (A) The criterion that the petitioner meets
11 the definition of community set forth in section
12 3 may be demonstrated by 1 or more of the fol-
13 lowing:

14 (i) Significant rates of marriage with-
15 in the group or, as may be culturally re-
16 quired, patterned out-marriages with other
17 Indian populations.

18 (ii) Significant social relationships
19 connecting individual members.

20 (iii) Significant rates of informal so-
21 cial interaction which exist broadly among
22 the members of a group.

23 (iv) A significant degree of shared or
24 cooperative labor or other economic activity
25 among the membership.

1 (v) Evidence of strong patterns of dis-
2 crimination or other social distinctions by
3 nonmembers.

4 (vi) Shared sacred or secular ritual
5 activity encompassing most of the group.

6 (vii) Cultural patterns shared among
7 a significant portion of the group that are
8 different from those of the non-Indian pop-
9 ulations with whom it interacts. These pat-
10 terns must function as more than a sym-
11 bolic identification of the group as Indian.
12 They may include, but are not limited to,
13 language, kinship organization, or religious
14 beliefs and practices.

15 (viii) The persistence of a named, col-
16 lective Indian identity continuously over a
17 period of more than 50 years, notwith-
18 standing changes in name.

19 (ix) A demonstration of political influ-
20 ence under the criterion in paragraph
21 (3)(B) shall be conclusive evidence for
22 demonstrating community for that period
23 of time.

24 (x) Other evidence as considered ap-
25 propriate by the Secretary.

1 (B) A petitioner shall be considered to
2 have provided sufficient evidence of community
3 at a given point in time if evidence is provided
4 to demonstrate any 1 of the following:

5 (i) More than 50 percent of the mem-
6 bers reside in a geographical area or areas
7 no more than 50 miles from a historic land
8 base(s) or site(s) of the petitioner.

9 (ii) At least 50 percent of the mar-
10 riages in the group are between members
11 of the group.

12 (iii) At least 50 percent of the group
13 members maintain distinct cultural pat-
14 terns such as, but not limited to, language,
15 kinship organization, or religious beliefs
16 and practices.

17 (iv) There are distinct social institu-
18 tions encompassing more than 50 percent
19 of the members, such as kinship organiza-
20 tions, formal or informal economic co-
21 operation, or religious organizations.

22 (v) The group has met the criterion in
23 paragraph (3) using evidence described in
24 paragraph (3)(B).

1 (3) The petitioner has maintained political in-
2 fluence or authority over its members as an autono-
3 mous entity from 1934 until the present.

4 (A) This criterion may be demonstrated by
5 1 or more of the evidence listed below or by
6 other evidence of political influence or author-
7 ity:

8 (i) The group is able to mobilize sig-
9 nificant numbers of members and signifi-
10 cant resources from its members for group
11 purposes.

12 (ii) Most of the membership considers
13 issues acted upon or actions taken by
14 group leaders or governing bodies to be of
15 importance.

16 (iii) There is widespread knowledge,
17 communication, and involvement in politi-
18 cal processes by most of the group's mem-
19 bers.

20 (iv) There are internal conflicts which
21 show controversy over valued group goals,
22 properties, policies, processes, or decisions.

23 (B) A petitioning group shall be considered
24 to have provided sufficient evidence to dem-
25 onstrate the exercise of political influence or au-

1 thority at a given point in time by demonstrat-
2 ing any 1 of the following:

3 (i) A continuous line of group leaders,
4 acknowledged and accepted as such by
5 State or local governments or nonmembers
6 in general, with a description of the means
7 of selection.

8 (ii) Group leaders or other mecha-
9 nisms exist or existed which allocate group
10 resources such as land, residence rights,
11 and the like on a consistent basis.

12 (iii) Group leaders or other mecha-
13 nisms exist or existed which settle disputes
14 between members or subgroups by some
15 means.

16 (iv) Group leaders or other mecha-
17 nisms exist or existed which exert strong
18 influence on the behavior of individual
19 members, such as the establishment or
20 maintenance of norms and the enforcement
21 of sanctions to influence behavior.

22 (v) Group leaders or other mecha-
23 nisms exist or existed which organize or in-
24 fluence economic subsistence activities

1 among the members, including shared or
2 cooperative labor.

3 (C) A group that has met the requirements
4 in paragraph (3) at a given point in time shall
5 be considered to have provided sufficient evi-
6 dence to meet this criterion at that point in
7 time.

8 (4) A copy of the group's present governing
9 document, including its membership criteria. In the
10 absence of a written document, the petitioner must
11 provide a statement describing in full its member-
12 ship criteria.

13 (5) The petitioner's membership consists of in-
14 dividuals who descend from a historical Indian tribe
15 or from historical Indian tribes which combined and
16 functioned as a single autonomous political entity.

17 (A) A petitioner shall be presumed to de-
18 scend from a historical Indian tribe or com-
19 bined tribes upon proof by the petitioner that
20 its member descend from an Indian entity in
21 existence in 1934. This presumption may be re-
22 butted by affirmative evidence offered by any
23 interested party that the Indian entity in exist-
24 ence in 1934 does not descend from a historical
25 Indian tribe or combined tribes.

1 (B) The following evidence shall be deemed
2 by the Commission to prove descent from a his-
3 torical Indian entity for the time for which such
4 evidence is available:

5 (i) Rolls prepared by the Secretary on
6 a descendancy basis for purposes of dis-
7 tributing claims money, providing allot-
8 ments, or other purposes.

9 (ii) State, Federal, or other official
10 records or evidence identifying present
11 members or ancestors of present members
12 as being descendants of a historical tribe
13 or combined tribes.

14 (iii) Church, school, and other similar
15 enrollment records identifying present
16 members or ancestors of present members
17 as being descendants of a historical tribe
18 or combined tribes.

19 (iv) Affidavits of recognition by tribal
20 elders, leaders, or the tribal governing body
21 identifying present members or ancestors
22 of present members as being descendants
23 of a historical tribe or combined tribes.

24 (v) Reports, research, or other like
25 statements based upon firsthand experi-

1 ence of historians, anthropologists, and
2 genealogists with established expertise on
3 the petitioner or Indian entities in general
4 identifying present members or ancestors
5 of present members as being descendants
6 of a historical tribe or combined tribes.

7 (C) A petitioner may also demonstrate this
8 criterion by other records of evidence identify-
9 ing present members or ancestors of present
10 members as being descendants of a historical
11 tribe or combined tribes.

12 (D) The petitioner must provide an official
13 membership list, separately certified by the
14 group's governing body of all known current
15 members of the group. This list must include
16 each member's full name (including maiden
17 name), date of birth, and current residential ad-
18 dress. The petitioner must also provide a copy
19 of each available former list of members based
20 on the group's own defined criteria, as well as
21 a statement describing the circumstances sur-
22 rounding the preparation of the current list
23 and, insofar as possible, the circumstances sur-
24 rounding the preparation of former lists.

1 (6) The membership of the petitioning group is
2 composed principally of persons who are not mem-
3 bers of any acknowledged North American Indian
4 tribe. However, under certain conditions a petition-
5 ing group may be acknowledged even if its member-
6 ship is composed principally of persons whose names
7 have appeared on rolls of, or who have been other-
8 wise associated with, an acknowledged Indian tribe.
9 The conditions are that the group must establish
10 that it has functioned since 1934 until the present
11 as a separate and autonomous Indian tribal entity,
12 that its members do not maintain a bilateral political
13 relationship with the acknowledged tribe, and that
14 its members have provided written confirmation of
15 their membership in the petitioning group.

16 (c) PREVIOUS ACKNOWLEDGMENT.—

17 (1) IN GENERAL.—Evidence which dem-
18 onstrates previous Federal acknowledgment includes,
19 but is not limited to—

20 (A) evidence that the group has had or is
21 the successor in interest to a tribe that has had
22 treaty relations with the United States;

23 (B) evidence that the group has been or is
24 the successor in interest to a tribe that has

1 been denominated a tribe by Act of Congress or
2 Executive order;

3 (C) evidence that the group has been or is
4 the successor in interest to a tribe that has
5 been treated by the Federal Government as
6 having collective rights in tribal lands or funds.

7 (2) PRESUMPTION OF CONTINUOUSNESS.—A
8 petitioner that can demonstrate previous Federal ac-
9 knowledgment by a preponderance of the evidence
10 shall be required to demonstrate the existence of
11 current political authority as defined by subsection
12 (b)(3), with a time depth limited to 10 years preced-
13 ing the date of the petition. Upon such demonstra-
14 tion, a presumption of continuous existence since
15 previous Federal acknowledgment shall arise. Unless
16 such presumption is rebutted by evidence offered by
17 an interested party proving by a preponderance of
18 the evidence that the previously recognized group
19 has abandoned tribal relations, such group shall be
20 recognized.

21 (d) RECOGNITION OF GROUPS MEETING CRITERIA.—
22 The Commission shall recognize as an Indian tribe a peti-
23 tioning group that demonstrates the criteria set out in this
24 section by a preponderance of the evidence. Such recog-
25 nized tribes shall be entitled to the same privileges, immu-

1 nities, rights, and benefits of other federally recognized
2 tribes. Neither shall the Department of the Interior nor
3 any other Federal agency purport to diminish, condition,
4 or revoke the privileges, immunities, rights, and benefits
5 of Indian tribes recognized by any means before the effective date of this Act or under the provisions of this Act.

7 **SEC. 6. NOTICE OF RECEIPT OF PETITION AND LETTERS OF**
8 **INTENT.**

9 (a) PETITIONER.—Not later than 30 days after a petition is submitted or transferred to the Commission under
10 section 5(a), the Commission shall send an acknowledgment of receipt in writing to the petitioner and shall have
11 published in the Federal Register a notice of such receipt,
12 including the name, location, and mailing address of the
13 petitioner and such other information that will identify the
14 entity who submitted the petition and the date the petition
15 was received by the Commission. The notice shall also indicate where a copy of the petition may be examined.

19 (b) LETTERS OF INTENT.—As to letters of intent,
20 publish in the Federal Register a notice of such receipt,
21 including the name, location, and mailing address of petitioner. A petitioner who has submitted a letter of intent
22 or had a letter of intent transferred to the Commission
23 under section 5(a) shall not be required to submit a documented petition within any time period.

1 (c) OTHERS.—The Commission shall also notify, in
2 writing, the Governor and attorney general of, and each
3 recognized Indian tribe within, any State in which a peti-
4 tioner resides.

5 (d) PUBLICATION; OPPORTUNITY FOR SUPPORTING
6 OR OPPOSING SUBMISSIONS.—The Commission shall pub-
7 lish the notice of receipt of the petition in a major news-
8 paper of general circulation in the town or city nearest
9 the location of the petitioner. The notice shall include, in
10 addition to the information described in subsection (a), no-
11 tice of opportunity for other parties to submit factual or
12 legal arguments in support of or in opposition to, the peti-
13 tion. Such submissions shall be provided to the petitioner
14 upon receipt by the Commission. The petitioner shall be
15 provided an opportunity to respond to such submissions
16 prior to a determination on the petition by the Commis-
17 sion.

18 **SEC. 7. PROCESSING THE PETITION.**

19 (a) REVIEW.—

20 (1) IN GENERAL.—Upon receipt of a docu-
21 mented petition, the Commission shall conduct a re-
22 view to determine whether the petitioner is entitled
23 to be recognized as an Indian tribe.

24 (2) CONSIDERATION.—The review conducted
25 under paragraph (1) shall include consideration of

1 the petition, supporting evidence, and the factual
2 statements contained in the petition.

3 (3) RESEARCH.—The Commission may also ini-
4 tiate other research for any purpose relative to ana-
5 lyzing the petition and obtaining additional informa-
6 tion about the petitioner’s status and may consider
7 any evidence which may be submitted by other par-
8 ties.

9 (4) ACCESS TO OTHER FEDERAL RESOURCES.—
10 Upon request by the petitioner, the Library of Con-
11 gress and the National Archives shall each allow ac-
12 cess to the petitioner to its resources, records, and
13 documents, for the purpose of conducting research
14 and preparing evidence concerning the status of the
15 petitioner.

16 (b) CONSIDERATION.—

17 (1) IN GENERAL.—Except as otherwise pro-
18 vided in this subsection, petitions shall be considered
19 on a first come, first served basis, determined by the
20 date of the original filing of the petition with the
21 Commission, or the Department if the petition is
22 transferred to the Commission pursuant to section
23 5(a). The Commission shall establish a priority reg-
24 ister including those petitions pending before the
25 Department on the date of enactment of this Act.

1 (2) PRIORITY.—Petitions that are submitted to
2 the Commission by Indian groups that meet 1 or
3 more of the requirements set forth in section 5(c)
4 shall receive priority consideration over petitions
5 submitted by any other Indian group.

6 **SEC. 8. PRELIMINARY HEARING.**

7 (a) IN GENERAL.—Not later than 60 days after the
8 receipt of a petition by the Commission, the Commission
9 shall set a date for a preliminary hearing. At the prelimi-
10 nary hearing, the petitioner and any other concerned party
11 may provide evidence concerning the status of the peti-
12 tioner.

13 (b) DETERMINATION.—

14 (1) IN GENERAL.—Within 30 days after the
15 conclusion of the preliminary hearing under sub-
16 section (a), the Commission shall make a determina-
17 tion either—

18 (A) to extend acknowledgement to the peti-
19 tioner; or

20 (B) that the petitioner proceed to an adju-
21 dicatory hearing.

22 (2) PUBLISHED IN FEDERAL REGISTER.—The
23 Commission shall publish the determination in the
24 Federal Register.

1 (c) INFORMATION TO BE PROVIDED PREPARATORY
2 TO AN ADJUDICATORY HEARING.—

3 (1) IN GENERAL.—If the Commission deter-
4 mines under subsection (b) that the petitioner pro-
5 ceed to an adjudicatory hearing, the Commission
6 shall—

7 (A) immediately make available to the peti-
8 tioner all records relied upon by the Commis-
9 sion and its staff in making the preliminary de-
10 termination to assist the petitioner in preparing
11 for the adjudicatory hearing, and shall also in-
12 clude such guidance as the Commission consid-
13 ers necessary or appropriate to assist the peti-
14 tioner in preparing for the hearing including
15 references to prior decisions of the Commission
16 or to recognition decisions made under regula-
17 tions prescribed by the Secretary that will pro-
18 vide direction in preparing for the adjudicatory
19 hearing; and if prior recognition decisions are
20 referred to, the Commission will make all
21 records relating to such decisions available to
22 the petitioner in a timely manner; and

23 (B) within 30 days after the conclusion of
24 the preliminary hearing under subsection (a),
25 notify the petitioner in writing, which notice

1 shall include a list of any deficiencies or omis-
2 sions on which the Commission relied in making
3 its determination.

4 (2) LIST OF DEFICIENCIES.—The list of defi-
5 ciencies and omissions provided under paragraph
6 (1)(B) shall be the subject of the adjudicatory hear-
7 ing. The Commission may not add to this list once
8 it is issued.

9 **SEC. 9. ADJUDICATORY HEARING.**

10 (a) IN GENERAL.—Not later than 180 days after the
11 conclusion of the preliminary hearing, the Commission
12 shall afford the petitioner described in section 8(b)(1)(B)
13 an adjudicatory hearing. The hearing shall be on the list
14 of deficiencies and omissions provided under section
15 8(c)(1)(B) and shall be conducted on the record pursuant
16 to sections 554, 556, and 557 of title 5, United States
17 Code.

18 (b) TESTIMONY FROM STAFF OF COMMISSION.—The
19 Commission shall require testimony from its acknowledge-
20 ment and research staff that worked on the preliminary
21 determination and that are assisting the Commission in
22 the final determination under subsection (d) and may re-
23 quire the testimony of other witnesses. Any such testimony
24 shall be subject to cross-examination by the petitioner.

1 (c) EVIDENCE BY PETITIONER.—The petitioner may
2 provide such evidence as the petitioner deems appropriate.

3 (d) DECISION BY COMMISSION.—Within 60 days
4 after the end of the hearing held under subsection (a),
5 the Commission shall—

6 (1) make a determination as to the extension or
7 denial of acknowledgment to the petitioner;

8 (2) publish its determination under paragraph
9 (1) in the Federal Register; and

10 (3) deliver a copy of the determination to the
11 petitioner, and to every other interested party.

12 **SEC. 10. APPEALS.**

13 (a) IN GENERAL.—Within 60 days after the date the
14 Commission’s decision is published under section 9(d), the
15 petitioner may appeal the determination to the United
16 States District Court for the District of Columbia.

17 (b) ATTORNEY FEES.—If the petitioner prevails in
18 the appeal described in subsection (a), it shall be eligible
19 for an award of reasonable attorney fees and costs under
20 the provisions of section 504 of title 5, United States
21 Code, or section 2412 of title 28 of such Code, as the case
22 may be.

23 **SEC. 11. IMPLEMENTATION OF DECISIONS.**

24 (a) ELIGIBILITY FOR SERVICES AND BENEFITS.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 upon recognition by the Commission that the peti-
3 tioner is an Indian tribe, the Indian tribe shall be
4 eligible for the services and benefits from the Fed-
5 eral Government that are available to other federally
6 recognized Indian tribes by virtue of their status as
7 Indian tribes with a government-to-government rela-
8 tionship with the United States, as well as having
9 the responsibilities and obligations of such Indian
10 tribes. Such recognition shall subject the Indian
11 tribes to the same authority of Congress and the
12 United States to which other federally recognized
13 tribes are subject.

14 (2) AVAILABILITY.—Recognition of the Indian
15 tribe under this Act does not create an immediate
16 entitlement to existing programs of the Bureau.
17 Such programs shall become available upon appro-
18 priation of funds by law. Requests for appropriations
19 shall follow a determination under subsection (b) of
20 the needs of the newly-recognized Indian tribe.

21 (b) NEEDS DETERMINATION.—Within 6 months
22 after an Indian tribe is recognized under this Act, the ap-
23 propriate area offices of the Bureau and the Indian Health
24 Service shall consult and develop in cooperation with the
25 Indian tribe, and forward to the respective Secretary, a

1 determination of the needs of the Indian tribe and a rec-
2 ommended budget required to serve the newly recognized
3 Indian tribe. The recommended budget shall be considered
4 along with recommendations by the appropriate Secretary
5 in the budget-request process.

6 **SEC. 12. ANNUAL REPORT CONCERNING COMMISSION'S AC-**
7 **TIVITIES.**

8 (a) LIST OF RECOGNIZED TRIBES.—Not later than
9 90 days after the date of the enactment of this Act, and
10 annually on or before every January 30 thereafter, the
11 Commission shall publish in the Federal Register a list
12 of all Indian tribes which are recognized by the Federal
13 Government and receiving services from the Bureau of In-
14 dian Affairs.

15 (b) ANNUAL REPORT.—Beginning 1 year after the
16 date of the enactment of this Act, and annually thereafter,
17 the Commission shall submit a report to the Committee
18 on Resources of the House of Representatives and to the
19 Committee on Indian Affairs of the Senate a report on
20 its activities, which shall include at a minimum the follow-
21 ing:

22 (1) The number of petitions pending at the be-
23 ginning of the year and the names of the petitioners.

24 (2) The number of petitions received during the
25 year and the names of the petitioners.

1 (3) The number of petitions the Commission
2 approved for acknowledgment and the names of the
3 acknowledged petitioners.

4 (4) The number of petitions the Commission
5 denied for acknowledgment and the names of the pe-
6 titioners.

7 (5) The status of all pending petitions and the
8 names of the petitioners.

9 **SEC. 13. ACTIONS BY PETITIONERS FOR ENFORCEMENT.**

10 Any petitioner may bring an action in the district
11 court of the United States for the district in which the
12 petitioner resides, or the United States District Court for
13 the District of Columbia, to enforce the provisions of this
14 Act, including any time limitations within which actions
15 are required to be taken, or decisions made, under this
16 Act and the district court shall issue such orders (includ-
17 ing writs of mandamus) as may be necessary to enforce
18 the provisions of this Act.

19 **SEC. 14. REGULATIONS.**

20 The Commission is authorized to prescribe such regu-
21 lations as may be necessary to carry out the provisions
22 and purposes of this Act. All such regulations must be
23 published in accordance with the provisions of title 5,
24 United States Code.

1 **SEC. 15. GUIDELINES AND ADVICE.**

2 (a) GUIDELINES.—Not later than 180 days after pe-
3 titions and letters of intent have been transferred to the
4 Commission by the Secretary under section 5(a)(4)(A),
5 the Commission shall make available suggested guidelines
6 for the format of petitions, including general suggestions
7 and guidelines on where and how to research required in-
8 formation, but such examples shall not preclude the use
9 of any other format.

10 (b) RESEARCH ADVICE.—The Commission, upon re-
11 quest, is authorized to provide suggestions and advise to
12 any petitioner for his research into the petitioner’s histori-
13 cal background and Indian identity. The Commission shall
14 not be responsible for the actual research on behalf of the
15 petitioner.

16 **SEC. 16. ASSISTANCE TO PETITIONERS.**

17 (a) GRANTS.—

18 (1) IN GENERAL.—The Secretary of Health and
19 Human Services may award grants to Indian groups
20 seeking Federal recognition to enable the Indian
21 groups to—

22 (A) conduct the research necessary to sub-
23 stantiate petitions under this Act; and

24 (B) prepare documentation necessary for
25 the submission of a petition under this Act.

1 (2) OTHER GRANTS.—The grants made under
2 this subsection shall be in addition to any other
3 grants the Secretary of Health and Human Services
4 is authorized to provide under any other provision of
5 law.

6 (b) COMPETITIVE AWARD.—Grants provided under
7 subsection (a) shall be awarded competitively based on ob-
8 jective criteria prescribed in regulations promulgated by
9 the Secretary of Health and Human Services.

10 **SEC. 17. SEVERABILITY.**

11 If any provision of this Act or the application thereof
12 to any petitioner is held invalid, the invalidity shall not
13 affect other provisions or applications of the Act which
14 can be given effect without regard to the invalid provision
15 or application, and to this end the provisions of this Act
16 shall be severable.

17 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS.**

18 (a) COMMISSION.—There are authorized to be appro-
19 priated for the Commission for the purpose of carrying
20 out the provisions of this Act (other than section 16),
21 \$1,500,000 for fiscal year 1998 and \$1,500,000 for each
22 of the 12 succeeding fiscal years.

23 (b) SECRETARY OF HHS.—There are authorized to
24 be appropriated for the Administration for Native Ameri-
25 cans of the Department of Health and Human Services

- 1 for the purpose of carrying out the provisions of section
- 2 16, \$3,000,000 for each fiscal year.

