

107TH CONGRESS  
1ST SESSION

# S. 1392

To establish procedures for the Bureau of Indian Affairs of the Department of the Interior with respect to tribal recognition.

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IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2001

Mr. DODD (for himself and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To establish procedures for the Bureau of Indian Affairs of the Department of the Interior with respect to tribal recognition.

1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Tribal Recognition and Indian Bureau Enhancement Act  
6       of 2001”.

7       (b) TABLE OF CONTENTS.—The table of contents of  
8       this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purposes.

Sec. 4. Definitions.  
Sec. 5. Effect of acknowledgment of tribal existence.  
Sec. 6. Scope.  
Sec. 7. Letter of intent.  
Sec. 8. Duties of the Department.  
Sec. 9. Requirements for the documented petition.  
Sec. 10. Mandatory criteria for Federal acknowledgment.  
Sec. 11. Previous Federal acknowledgment.  
Sec. 12. Notice of receipt of a letter of intent or documented petition.  
Sec. 13. Processing of the documented petition.  
Sec. 14. Testimony and the opportunity to be heard.  
Sec. 15. Written submissions by interested parties.  
Sec. 16. Publication of final determination.  
Sec. 17. Independent review, reconsideration, and final action.  
Sec. 18. Implementation of decision acknowledging status as an Indian tribe.  
Sec. 19. Authorization of appropriations.

**1 SEC. 2. FINDINGS.**

**2** Congress makes the following findings:

**3**                   (1) The United States has an obligation to recognize and respect the sovereignty of Native American peoples who have maintained their social, cultural, and political identity.

**7**                   (2) All Native American tribal governments that represent tribes that have maintained their social, cultural, and political identity, to the extent possible within the context of history, are entitled to establish government-to-government relations with the United States and are entitled to the rights appertaining to sovereign governments.

**14**                   (3) The Bureau of Indian Affairs of the Department of the Interior exercises responsibility for determining whether Native American groups constitute “Federal Tribes” and are therefore entitled

1 to be recognized by the United States as sovereign  
2 nations.

3 (4) In recent years, the decisionmaking process  
4 used by the Bureau of Indian Affairs to resolve  
5 claims of tribal sovereignty has been widely criti-  
6 cized.

7 (5) In order to ensure continued public con-  
8 fidence in the Federal Government's decisions per-  
9 taining to tribal recognition, it is necessary to re-  
10 form the recognition process.

11 **SEC. 3. PURPOSES.**

12 The purposes of this Act are as follows:

13 (1) To establish administrative procedures to  
14 extend Federal recognition to certain Indian groups.

15 (2) To extend to Indian groups that are deter-  
16 mined to be Indian tribes the protection, services,  
17 and benefits available from the Federal Government  
18 pursuant to the Federal trust responsibility with re-  
19 spect to Indian tribes.

20 (3) To extend to Indian groups that are deter-  
21 mined to be Indian tribes the immunities and privi-  
22 leges available to other federally acknowledged In-  
23 dian tribes by virtue of their status as Indian tribes  
24 with a government-to-government relationship with  
25 the United States.

## 12 SEC. 4. DEFINITIONS.

13 In this Act:

14 (1) BUREAU.—The term “Bureau” means the  
15 Bureau of Indian Affairs of the Department of the  
16 Interior.

1 guments address the mandatory criteria set forth in  
2 section 10.

3 (4) HISTORICALLY, HISTORICAL, OR HIS-  
4 TORY.—The term “historically”, “historical”, or  
5 “history” means dating from the first sustained con-  
6 tact with non-Indians.

7 (5) INDIAN GROUP OR GROUP.—The term “In-  
8 dian group” or “group” means any Indian or Alaska  
9 Native aggregation within the continental United  
10 States that the Secretary does not acknowledge to be  
11 an Indian tribe.

12 (6) INDIAN TRIBE; TRIBE.—The terms “Indian  
13 tribe” and “tribe” mean any group that the Sec-  
14 retary determines to have met the mandatory cri-  
15 teria set forth in section 10.

16 (7) PETITIONER.—The term “petitioner”  
17 means any entity that has submitted a letter of in-  
18 tent to the Secretary requesting acknowledgment  
19 that the entity is an Indian tribe.

20 (8) SECRETARY.—The term “Secretary” means  
21 the Secretary of the Interior.

22 **SEC. 5. EFFECT OF ACKNOWLEDGMENT OF TRIBAL EXIST-  
23 ENCE.**

24 Acknowledgment of an Indian tribe under this Act—

4 (2) means that the tribe is entitled to the im-  
5 munities and privileges available to other federally  
6 acknowledged Indian tribes by virtue of their govern-  
7 ment-to-government relationship with the United  
8 States;

13 (4) subjects the Indian tribe to the same au-  
14 thority of Congress and the United States to which  
15 other federally acknowledged tribes are subjected.

## 16 SEC. 6. SCOPE.

17 (a) IN GENERAL.—This Act applies only to those Na-  
18 tive American Indian groups indigenous to the continental  
19 United States which are not currently acknowledged as In-  
20 dian tribes by the Department. It is intended to apply only  
21 to groups that can present evidence of a substantially con-  
22 tinuous tribal existence and which have functioned as au-  
23 tonomous entities throughout history until the date of the  
24 submission of the documented petition.

1       (b) EXCLUSIONS.—The procedures established under  
2 this Act shall not apply to any of the following:

3               (1) Any Indian tribe, organized band, pueblo,  
4 Alaska Native village, or community that, as of the  
5 date of enactment of this Act, has been acknowled-  
6 ged as such and is receiving services from the Bu-  
7 reau.

8               (2) An association, organization, corporation, or  
9 group of any character that has been formed after  
10 December 31, 2002.

11               (3) Splinter groups, political factions, commu-  
12 nities, or groups of any character that separate from  
13 the main body of a currently acknowledged tribe, ex-  
14 cept that any such group that can establish clearly  
15 that the group has functioned throughout history  
16 until the date of the submission of the documented  
17 petition as an autonomous tribal entity may be ac-  
18 knowledged under this Act, even though the group  
19 has been regarded by some as part of or has been  
20 associated in some manner with an acknowledged  
21 North American Indian tribe.

22               (4) Any group which is, or the members of  
23 which are, subject to congressional legislation termi-  
24 nating or forbidding the Federal relationship.

9 (c) PENDING PETITIONS.—Any Indian group whose  
10 documented petition is under active consideration under  
11 the regulations referred to in subsection (b)(5) as of the  
12 date of enactment of this Act, and for which a determina-  
13 tion is not final and effective as of such date, may opt  
14 to have their petitioning process completed in accordance  
15 with this Act. Any such group may request a suspension  
16 of consideration in accordance with the provisions of sec-  
17 tion 83.10(g) of title 25 of the Code of Federal Regula-  
18 tions, as in effect on the date of enactment of this Act,  
19 of not more than 180 days in order to provide additional  
20 information or argument.

**21 SEC. 7. LETTER OF INTENT.**

22 (a) IN GENERAL.—Any Indian group in the conti-  
23 nental United States that desires to be acknowledged as  
24 an Indian tribe and that can satisfy the mandatory criteria  
25 set forth in section 10 may submit a letter of intent to

1 the Secretary. A letter of intent may be filed in advance  
2 of, or at the same time as, a group's documented petition.

3 (b) APPROVAL OF GOVERNING BODY.—A letter of in-  
4 tent must be produced, dated, and signed by the governing  
5 body of the Indian group submitting the letter.

6 **SEC. 8. DUTIES OF THE DEPARTMENT.**

7 (a) PUBLICATION OF LIST OF INDIAN TRIBES.—The  
8 Department shall publish in the Federal Register, no less  
9 frequently than every 3 years, a list of all Indian tribes  
10 entitled to receive services from the Bureau by virtue of  
11 their status as Indian tribes. The list may be published  
12 more frequently, if the Secretary deems it necessary.

13 (b) GUIDELINES FOR PREPARATION OF DOCU-  
14 MENTED PETITIONS.—

15 (1) IN GENERAL.—The Secretary shall make  
16 available guidelines for the preparation of docu-  
17 mented petitions. Such guidelines shall include the  
18 following:

19 (A) An explanation of the criteria and  
20 other provisions relevant to the Department's  
21 consideration of a documented petition.

22 (B) A discussion of the types of evidence  
23 which may be used to demonstrate satisfaction  
24 or particular criteria.

(C) General suggestions and guidelines on how and where to conduct research.

3 (D) An example of a documented petition  
4 format, except that such example shall not pre-  
5 clude the use of any other format.

9 (c) ASSISTANCE.—The Department shall, upon re-  
10 quest, provide petitioners with suggestions and advice re-  
11 garding preparation of the documented petition. The De-  
12 partment shall not be responsible for any actual research  
13 necessary to prepare such petition.

14 (d) NOTICE REGARDING CURRENT PETITIONS.—Any  
15 Indian group whose documented petition is under active  
16 consideration as of the date of enactment of this Act shall  
17 be notified of the opportunity under section 6(c) to choose  
18 whether to complete their petitioning process under the  
19 provisions of this Act or under the provisions of part 83  
20 of title 25 of the Code of Federal Regulations, as in effect  
21 on the day before such date.

22 (e) NOTICE TO GROUPS WITH A LETTER OF IN-  
23 TENT.—Any group that has submitted a letter of intent  
24 to the Department as of the date of enactment of this Act  
25 shall be notified that any documented petition submitted

1 by the group shall be considered under the provisions of  
2 this Act.

3 **SEC. 9. REQUIREMENTS FOR THE DOCUMENTED PETITION.**

4 (a) IN GENERAL.—The documented petition may be  
5 in any readable form that contains detailed, specific evi-  
6 dence in support of a request to the Secretary to acknowl-  
7 edge tribal existence.

8 (b) APPROVAL OF GOVERNING BODY.—The docu-  
9 mented petition must include a certification, signed and  
10 dated by members of the group's governing body, stating  
11 that it is the group's official documented petition.

12 (c) SATISFACTION OF MANDATORY CRITERIA.—A pe-  
13 titioner must satisfy all of the mandatory criteria set forth  
14 in section 10 in order for tribal existence to be acknowl-  
15 edged. The documented petition must include thorough ex-  
16 planations and supporting documentation in response to  
17 all of such criteria.

18 (d) STANDARDS FOR DENIAL.—

19 (1) IN GENERAL.—Subject to paragraphs (2)  
20 and (3), a petitioner shall not be acknowledged if the  
21 evidence presented by the petitioner or others is in-  
22 sufficient to demonstrate that the petitioner meets  
23 each of the mandatory criteria in section 10.

24 (2) REASONABLE LIKELIHOOD OF VALIDITY.—  
25 A criterion shall be considered met if the Secretary

1 finds that it is more likely than not that the evi-  
2 dence presented demonstrates the establishment of  
3 the criterion.

4 (3) CONCLUSIVE PROOF NOT REQUIRED.—Con-  
5 clusive proof of the facts relating to a criterion shall  
6 not be required in order for the criterion to be con-  
7 sidered met.

8 (e) CONSIDERATION OF HISTORICAL SITUATIONS.—  
9 Evaluation of petitions shall take into account historical  
10 situations and time periods for which evidence is demon-  
11 strably limited or not available. The limitations inherent  
12 in demonstrating the historical existence of community  
13 and political influence or authority shall also be taken into  
14 account. Existence of community and political influence  
15 or authority shall be demonstrated on a substantially con-  
16 tinuous basis, but such demonstration does not require  
17 meeting these criteria at every point in time. Fluctuations  
18 in tribal activity during various years shall not in them-  
19 selves be a cause for denial of acknowledgment under  
20 these criteria.

21 **SEC. 10. MANDATORY CRITERIA FOR FEDERAL ACKNOWL-**  
22 **EDGMENT.**

23 The mandatory criteria for Federal acknowledgment  
24 are the following:

(1) IDENTIFICATION ON A SUBSTANTIALLY CONTINUOUS BASIS.—The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may consist of any 1, or a combination, of the following, as well as other evidence of identification by other than the petitioner itself or its members:

13 (A) Identification as an Indian entity by  
14 Federal authorities.

15 (B) Relationships with State governments  
16 based on identification of the group as Indian.

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

20 (D) Identification as an Indian entity by  
21 anthropologists, historians, or other scholars.

22 (E) Identification as an Indian entity in  
23 newspapers and books.

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

## (2) DISTINCT COMMUNITY.—

(A) IN GENERAL.—A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the date of the submission of the documented petition. This criterion may be demonstrated by some combination of the following evidence or other evidence:

(i) Significant rates of marriage within the group, or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) Significant social relationships connecting individual members.

(iii) Significant rates of informal social interaction which exist broadly among the members of a group.

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

(v) Evidence of strong patterns of discrimination or other social distinctions by nonmembers.

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

(vii) Cultural patterns shared among a significant portion of the group that are different from those of the non-Indian populations with whom it interacts. Such patterns must function as more than a symbolic identification of the group as Indian, and may include language, kinship organization, or religious beliefs and practices.

(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) A demonstration of historical political influence under the criterion in paragraph (3) shall be evidence for demonstrating historical community.

(B) SUFFICIENT EVIDENCE.—A petitioner shall be considered to have provided sufficient evidence of community at a given point in time

1 if evidence is provided to demonstrate any 1 of  
2 the following:

3 (i) More than 50 percent of the mem-  
4 bers reside in a geographical area exclu-  
5 sively or almost exclusively composed of  
6 members of the group, and the balance of  
7 the group maintains consistent interaction  
8 with some members of the community.

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 language, kinship organiza-  
15 tion, or religious beliefs and practices.

16 (iv) There are distinct community so-  
17 cial institutions encompassing most of the  
18 members, such as kinship organizations,  
19 formal or informal economic cooperation,  
20 or religious organizations.

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

24 (3) POLITICAL INFLUENCE OR AUTHORITY.—

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 polit-  
18 ical processes by most of the group's mem-  
19 bers.

20 (iv) The group meets the criterion in  
21 paragraph (2) at more than a minimal  
22 level.

23 (v) There are internal conflicts which  
24 show controversy over valued group goals,  
25 properties, policies, processes, or decisions.

## 1 (B) SUFFICIENT EVIDENCE.—

2 (i) IN GENERAL.—A petitioning group  
3 shall be considered to have provided suffi-  
4 cient evidence to demonstrate the exercise  
5 of political influence or authority at a  
6 given point in time by demonstrating that  
7 group leaders or other mechanisms exist or  
8 existed that—

9 (I) allocate group resources such  
10 as land and residence rights on a con-  
11 sistent basis;

12 (II) settle disputes between mem-  
13 bers or subgroups by mediation or  
14 other means on a regular basis;

15 (III) exert strong influence on  
16 the behavior of individual members,  
17 such as the establishment or mainte-  
18 nance of norms and the enforcement  
19 of sanctions to direct or control be-  
20 havior; or

21 (IV) organize or influence eco-  
22 nomic subsistence activities among the  
23 members, including shared or coopera-  
24 tive labor.

1 (ii) PRESUMPTIVE EVIDENCE.—A  
2 group that has met the requirements in  
3 paragraph (2)(A) at a given point in time  
4 shall be considered to have provided suffi-  
5 cient evidence to meet this criterion at that  
6 point in time.

22 (i) Rolls prepared by the Secretary on  
23 a descendancy basis for purposes of dis-  
24 tributing claims money, providing allot-  
25 ments, or other purposes.

7 (iii) Church, school, and other similar  
8 enrollment records identifying group mem-  
9 bers or ancestors of such members as  
10 being descendants of a historical tribe or  
11 tribes that combined and functioned as a  
12 single autonomous political entity.

13 (iv) Affidavits of recognition by tribal  
14 elders, leaders, or the tribal governing body  
15 identifying group members or ancestors of  
16 such members as being descendants of a  
17 historical tribe or tribes that combined and  
18 functioned as a single autonomous political  
19 entity.

20 (v) Other records or evidence identi-  
21 fying members or ancestors of such mem-  
22 bers as being descendants of a historical  
23 tribe or tribes that combined and func-  
24 tioned as a single autonomous political en-  
25 tity.

(B) CERTIFIED MEMBERSHIP LIST.—The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. The list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner shall also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

15 (6) MEMBERSHIP IS COMPOSED PRINCIPALLY  
16 OF INDIVIDUALS WHO ARE NOT MEMBERS OF AN AC-  
17 KNOWLEDGED TRIBE.—

18 (A) IN GENERAL.—The membership of the  
19 petitioning group is composed principally of in-  
20 dividuals who are not members of any acknowl-  
21 edged North American Indian tribe.

22 (B) EXCEPTION.—A petitioning group may  
23 be acknowledged even if its membership is com-  
24 posed principally of individuals whose names  
25 have appeared on rolls of, or who have been

1           otherwise associated with, an acknowledged In-  
2           dian tribe, if the group establishes that it has  
3           functioned throughout history until the date of  
4           the submission of the documented petition as a  
5           separate and autonomous Indian tribal entity,  
6           that its members do not maintain a bilateral  
7           political relationship with the acknowledged  
8           tribe, and that its members have provided writ-  
9           ten confirmation of their membership in the pe-  
10           titioning group.

11           (7) NO LEGISLATION TERMINATES OR PRO-  
12           HIBITS THE FEDERAL RELATIONSHIP.—Neither the  
13           petitioner nor its members are the subject of con-  
14           gressional legislation that has expressly terminated  
15           or forbidden the Federal relationship.

16 **SEC. 11. PREVIOUS FEDERAL ACKNOWLEDGMENT.**

17           The provisions of section 83.8 of title 25 of the Code  
18           of Federal Regulations, as in effect on the date of enact-  
19           ment of this Act, shall apply with respect to petitioners  
20           claiming previous Federal acknowledgment under this Act.

21 **SEC. 12. NOTICE OF RECEIPT OF A LETTER OF INTENT OR**  
22           **DOCUMENTED PETITION.**

23           (a) NOTICE AND PUBLICATION.—

24           (1) IN GENERAL.—Within 30 days after receiv-  
25           ing a letter of intent, or a documented petition if a

1 letter of intent has not previously been received and  
2 noticed, the Secretary shall acknowledge such receipt  
3 in writing and shall have published within 60 days  
4 in the Federal Register a notice of such receipt.

5 (2) REQUIREMENTS.—The notice published in  
6 the Federal Register shall include the following:

7 (A) The name, location, and mailing ad-  
8 dress of the petitioner and such other informa-  
9 tion as will identify the entity submitting the  
10 letter of intent or documented petition.

11 (B) The date the letter or petition was re-  
12 ceived.

13 (C) Information regarding how interested  
14 and informed parties may submit factual or  
15 legal arguments in support of, or in opposition  
16 to, the petitioner's request for acknowledgment  
17 or to request to be kept informed of all general  
18 actions affecting the petition.

19 (D) Information regarding where a copy of  
20 the letter of intent and the documented petition  
21 may be examined.

22 (b) OTHER NOTIFICATION.—The Secretary shall no-  
23 tify, in writing, the chief executive officer, members of  
24 Congress, and attorney general of the State in which a  
25 petitioner is located and of each State in which the peti-

1 tioner historically has been located. The Secretary shall  
2 also notify any recognized tribe and any other petitioner  
3 which appears to have a relationship with the petitioner,  
4 including a historical relationship, or which may otherwise  
5 be considered to have a potential interest in the acknowl-  
6 edgment determination. The Secretary shall also notify the  
7 chief executive officers of the counties and municipalities  
8 located in the geographic area historically occupied by the  
9 petitioning group.

10 (c) OTHER PUBLICATION.—The Secretary shall also  
11 publish the notice of receipt of the letter of intent, or docu-  
12 mented petition if a letter of intent has not been previously  
13 received, in a major newspaper or newspapers of general  
14 circulation in the town or city nearest to the petitioner.  
15 Such notice shall include the information required under  
16 subsection (a)(2).

17 **SEC. 13. PROCESSING OF THE DOCUMENTED PETITION.**

18 The provisions of section 83.10 of title 25 of the Code  
19 of Federal Regulations, as in effect on the date of enact-  
20 ment of this Act, shall apply with respect to the processing  
21 of a documented petition under this Act.

22 **SEC. 14. TESTIMONY AND THE OPPORTUNITY TO BE  
23 HEARD.**

24 (a) IN GENERAL.—The Secretary shall consider all  
25 relevant evidence from any interested party including

1 neighboring municipalities that possess information bear-  
2 ing on whether to recognize an Indian group or not.

3 (b) HEARING UPON REQUEST.—Upon an interested  
4 party's request, and for good cause shown, the Secretary  
5 shall conduct a formal hearing at which all interested par-  
6 ties may present evidence, call witnesses, cross-examine  
7 witnesses, or rebut evidence in the record or presented by  
8 other parties during the hearing.

9 (c) TRANSCRIPT REQUIRED.—A transcript of any  
10 hearing held under this section shall be made and shall  
11 become part of the administrative record upon which the  
12 Secretary is entitled to rely in determining whether to rec-  
13 ognize an Indian group.

14 **SEC. 15. WRITTEN SUBMISSIONS BY INTERESTED PARTIES.**

15 The Secretary shall consider any written materials  
16 submitted to the Bureau from any interested party, in-  
17 cluding neighboring municipalities, that possess informa-  
18 tion bearing on whether to recognize an Indian group.

19 **SEC. 16. PUBLICATION OF FINAL DETERMINATION.**

20 The Secretary shall publish in the Federal Register  
21 a complete and detailed explanation of the Secretary's  
22 final decision regarding a documented petition under this  
23 Act, including express finding of facts and of law with re-  
24 gard to each of the criteria listed in section 10.

1   **SEC. 17. INDEPENDENT REVIEW, RECONSIDERATION, AND**  
2                   **FINAL ACTION.**

3       The provisions of section 83.11 of title 25 of the Code  
4   of Federal Regulations, as in effect on the date of enact-  
5   ment of this Act, shall apply with respect to the inde-  
6   pendent review, reconsideration, and final action of the  
7   Secretary on a documented petition under this Act.

8   **SEC. 18. IMPLEMENTATION OF DECISION ACKNOWLEDGING**  
9                   **STATUS AS AN INDIAN TRIBE.**

10      The provisions of section 83.12 of title 25 of the Code  
11   of Federal Regulations, as in effect on the date of enact-  
12   ment of this Act, shall apply with respect to the implemen-  
13   tation of a decision under this Act acknowledging a peti-  
14   tioner as an Indian tribe.

15   **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

16      There is authorized to be appropriated to carry out  
17   this Act, \$10,000,000 for fiscal year 2002 and each fiscal  
18   year thereafter.

○