

107TH CONGRESS
1ST SESSION

S. 504

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

IN THE SENATE OF THE UNITED STATES

MARCH 9, 2001

Mr. CAMPBELL (for himself, Mr. INOUYE, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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 Tribal Federal
5 Recognition Administrative Procedures Act of 2001”.

6 SEC. 2. PURPOSES.

7 The purposes of this Act are as follows:

8 (1) To remove the Federal acknowledgment
9 process from the Bureau of Indian Affairs and

1 transfer the responsibility for the process to an inde-
2 pendent Commission on Indian Tribal Recognition.

3 (2) To establish a Commission on Indian Tribal
4 Recognition to review and act upon documented peti-
5 tions submitted by Indian groups that apply for
6 Federal recognition.

7 (3) To establish an administrative procedure
8 under which petitions for Federal recognition filed
9 by Indian groups will be considered.

10 (4) To provide clear and consistent standards of
11 administrative review of documented petitions for
12 Federal acknowledgment.

13 (5) To clarify evidentiary standards and expe-
14 dite the administrative review process by providing
15 adequate resources to process documented petitions.

16 (6) To ensure that when the Federal Govern-
17 ment extends acknowledgment to an Indian tribe,
18 the Federal Government does so with a consistent
19 legal, factual, and historical basis.

20 (7) To extend to Indian groups that are deter-
21 mined to be Indian tribes the protection, services,
22 and benefits available from the Federal Government
23 pursuant to the Federal trust responsibility with re-
24 spect to Indian tribes.

7 SEC. 3. DEFINITIONS.

8 In this Act:

14 (2) AUTONOMOUS.—

19 (B) CONTEXT OF TERM.—With respect to
20 a petitioner, the term shall be understood in the
21 context of the history, geography, culture, and
22 social organization of the petitioner.

23 (3) BUREAU.—The term “Bureau” means the
24 Bureau of Indian Affairs of the Department.

4 (5) COMMUNITY.—

5 (A) IN GENERAL.—The term “community”
6 means any group of people, living within a rea-
7 sonable territory, that is able to demonstrate
8 that—

9 (i) consistent interactions and signifi-
10 cant social relationships exist within the
11 membership; and

12 (ii) the members of that group are
13 differentiated from and identified as dis-
14 tinct from nonmembers.

15 (B) CONTEXT OF TERM.—The term shall
16 be understood in the context of the history, cul-
17 ture, and social organization of the group, tak-
18 ing into account the geography of the region in
19 which the group resides.

20 (6) CONTINUOUS OR CONTINUOUSLY.—With re-
21 spect to a period of history of a group, the term
22 “continuous” or “continuously” means extending
23 from 1900 throughout the history of the group to
24 the present substantially without interruption.

(7) DEPARTMENT.—The term “Department” means the Department of the Interior.

12 (10) INDIAN GROUP.—The term “Indian
13 group” means any Indian band, pueblo, village, or
14 community that is not acknowledged to be an Indian
15 tribe.

1 and any recognized Indian tribes and unrecognized
2 Indian groups that might be affected by an acknowledg-
3 edgement determination.

4 (12) LETTER OF INTENT.—The term “letter of
5 intent” means an undocumented letter or resolution
6 that—

7 (A) is dated and signed by the governing
8 body of an Indian group;

9 (B) is submitted to the Commission; and

10 (C) indicates the intent of the Indian
11 group to submit a documented petition for Fed-
12 eral acknowledgment.

13 (13) PETITIONER.—The term “petitioner”
14 means any group that submits a letter of intent to
15 the Commission requesting acknowledgment.

16 (14) POLITICAL INFLUENCE OR AUTHORITY.—

17 (A) IN GENERAL.—The term “political in-
18 fluence or authority” means a tribal council,
19 leadership, internal process, or other mecha-
20 nism that a group has used as a means of—

21 (i) influencing or controlling the be-
22 havior of its members in a significant man-
23 ner;

24 (ii) making decisions for the group
25 which substantially affect its members; or

1 (iii) representing the group in dealing
2 with nonmembers in matters of con-
3 sequence to the group.

4 (B) CONTEXT OF TERM.—The term shall
5 be understood in the context of the history, cul-
6 ture, and social organization of the group.

14 (16) SECRETARY.—The term “Secretary”
15 means the Secretary of the Interior.

16 (17) TREATY.—The term “treaty” means any
17 treaty—

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

21 (B) made by any government with, or on
22 behalf of, any Indian group or tribe, from which
23 the Federal Government or the colonial govern-
24 ment which was the predecessor to the United
25 States Government subsequently acquired terri-

1 tory by purchase, conquest, annexation, or ces-
2 sion; or

9 (A)(i) have been determined by the tribe to
10 meet the membership requirements of the tribe,
11 as set forth in the governing document of the
12 tribe; or

17 (B) have affirmatively demonstrated con-
18 sent to being listed as members of the tribe.

19 SEC. 4. COMMISSION ON INDIAN TRIBAL RECOGNITION.

20 (a) ESTABLISHMENT.—There is established the Com-
21 mission on Indian Tribal Recognition. The Commission
22 shall be an independent establishment, as defined in sec-
23 tion 104 of title 5, United States Code.

24 (b) MEMBERSHIP.—

25 (1) IN GENERAL—

9 (i) recommendations received from In-
10 dian groups and Indian tribes; and
11 (ii) individuals who have a back-
12 ground or who have demonstrated exper-
13 tise and experience in Indian law or policy,
14 anthropology, genealogy, or Native Amer-
15 ican history.

16 (C) BACKGROUND INFORMATION.—No in-
17 dividual shall be eligible for any appointment
18 to, or continue service on the Commission,
19 who—

20 (i) has been convicted of a felony; or
21 (ii) has any financial interest in, or
22 management responsibility for, any Indian
23 group.

16 (5) COMPENSATION.—

17 (A) IN GENERAL.—Each member of the
18 Commission shall receive compensation at a
19 rate equal to the daily equivalent of the annual
20 rate of basic pay prescribed for level V of the
21 Executive Schedule under section 5316 of title
22 5, United States Code, for each day, including
23 travelttime, that the member is engaged in the
24 actual performance of duties authorized by the
25 Commission.

1 (B) TRAVEL.—All members of the Com-
2 mission shall be reimbursed for travel and per
3 diem in lieu of subsistence expenses during the
4 performance of duties of the Commission while
5 away from their homes or regular places of
6 business, in accordance with subchapter I of
7 chapter 57 of title 5, United States Code.

23 (c) MEETINGS AND PROCEDURES.—

24 (1) IN GENERAL.—The Commission shall hold
25 its first meeting not later than 30 days after the

1 date on which all members of the Commission have
2 been appointed and confirmed by the Senate.

3 (2) QUORUM.—Two members of the Commis-
4 sion shall constitute a quorum for the transaction of
5 business.

6 (3) RULES.—The Commission may adopt such
7 rules (consistent with the provisions of this Act) as
8 may be necessary to establish the procedures of the
9 Commission and to govern the manner of operations,
10 organization, and personnel of the Commission.

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

13 (d) DUTIES.—The Commission shall carry out the
14 duties assigned to the Commission by this Act, and shall
15 meet the requirements imposed on the Commission by this
16 Act.

17 (e) POWERS AND AUTHORITIES.—

18 (1) POWERS AND AUTHORITIES OF CHAIR-
19 PERSON.—Subject to such rules and regulations as
20 may be adopted by the Commission, the Chairperson
21 may—

22 (A) appoint, terminate, and fix the com-
23 pensation (without regard to the provisions of
24 title 5, United States Code, governing appoint-
25 ments in the competitive service, and without

1 regard to the provisions of chapter 51 and sub-
2 chapter III of chapter 53 of that title, or of any
3 other provision of law, relating to the number,
4 classification, and General Schedule rates) of
5 an Executive Director of the Commission and of
6 such other personnel as the Chairperson con-
7 siders advisable to assist in the performance of
8 the duties of the Commission, at a rate not to
9 exceed a rate equal to the daily equivalent of
10 the annual rate of basic pay prescribed for level
11 V of the Executive Schedule under section 5316
12 of title 5, United States Code; and

13 (B) procure, as authorized by section
14 3109(b) of title 5, United States Code, tem-
15 porary and intermittent services to the same ex-
16 tent as is authorized by law for agencies in the
17 executive branch, but at rates not to exceed the
18 daily equivalent of the annual rate of basic pay
19 prescribed for level V of the Executive Schedule
20 under section 5316 of that title.

21 (2) GENERAL POWERS AND AUTHORITIES OF
22 COMMISSION.—

23 (A) IN GENERAL.—The Commission may
24 hold such hearings and sit and act at such

1 times as the Commission considers to be appropriate.
2

3 (B) OTHER AUTHORITIES.—As the Commission
4 may consider advisable, the Commission
5 may—

6 (i) take testimony;
7 (ii) have printing and binding done;
8 (iii) enter into contracts and other arrangements, subject to the availability of
9 funds;
10 (iv) make expenditures; and
11 (v) take other actions.

12 (C) OATHS AND AFFIRMATIONS.—Any
13 member of the Commission may administer
14 oaths or affirmations to witnesses appearing before the Commission.

15 (3) INFORMATION.—

16 (A) IN GENERAL.—The Commission may
17 secure directly from any officer, department,
18 agency, establishment, or instrumentality of the
19 Federal Government such information as the
20 Commission may require to carry out this Act.
21 Each such officer, department, agency, establish-
22 ment, or instrumentality shall furnish, to
23 the extent permitted by law, such information,

1 suggestions, estimates, and statistics directly to
2 the Commission, upon the request of the Chair-
3 person.

4 (B) FACILITIES, SERVICES, AND DE-
5 TAILS.—Upon the request of the Chairperson,
6 to assist the Commission in carrying out the
7 duties of the Commission under this section,
8 the head of any Federal department, agency, or
9 instrumentality may—

10 (i) make any of the facilities and serv-
11 ices of that department, agency, or instru-
12 mentality available to the Commission; and
13 (ii) detail any of the personnel of that
14 department, agency, or instrumentality to
15 the Commission, on a nonreimbursable
16 basis.

17 (C) MAILS.—The Commission may use the
18 United States mails in the same manner and
19 under the same conditions as other departments
20 and agencies of the United States.

21 (f) FEDERAL ADVISORY COMMITTEE ACT.—The pro-
22 visions of the Federal Advisory Committee Act (5 U.S.C.
23 App.) shall not apply to the Commission.

1 (g) TERMINATION OF COMMISSION.—The Commis-
2 sion shall terminate on the date that is 12 years after the
3 date of the first meeting of the Commission.

4 (h) APPOINTMENTS.—Notwithstanding any other
5 provision of this Act, the Secretary shall continue to exer-
6 cise those authorities vested in the Secretary relating to
7 supervision of Indian recognition regulated under part 83
8 of title 25 of the Code of Federal Regulations until such
9 time as the Commission is organized and prescribes regu-
10 lations. The Secretary shall provide staff and support as-
11 sistance to facilitate an orderly transition to regulation of
12 Indian recognition by the Commission.

13 **SEC. 5. DOCUMENTED PETITIONS FOR RECOGNITION.**

14 (a) IN GENERAL.—

15 (1) LETTERS OF INTENT AND DOCUMENTED
16 PETITIONS.—Subject to subsection (d) and except as
17 provided in paragraph (3), any Indian group may
18 submit to the Commission letters of intent and a
19 documented petition requesting that the Commission
20 recognize the group as an Indian tribe.

21 (2) HEARING.—

22 (A) IN GENERAL.—Indian groups that
23 have been denied or refused recognition as an
24 Indian tribe under regulations prescribed by the
25 Secretary shall be entitled to an adjudicatory

1 hearing under section 9 before the Commission,
2 if the Commission determines that the criteria
3 established by this Act changes the merits of
4 the Indian group's documented petition sub-
5 mitted to the Department.

6 (B) HEARING RECORD.—For purposes of
7 subparagraph (A), the Commission shall review
8 the administrative record containing the docu-
9 mented petition that formed the basis of the de-
10 termination to the Indian group by the Sec-
11 retary.

12 (C) TREATMENT OF SECRETARY'S FINAL
13 DETERMINATION.—For purposes of the adju-
14 dicatory hearing, the Secretary's final deter-
15 mination shall be considered a preliminary de-
16 termination under section 8(b)(1)(B).

17 (D) OFFICIAL GOVERNMENT ACTIONS TO
18 BE CONSIDERED CONCERNING EVIDENCE OF
19 CRITERIA.—A statement and an analysis of
20 facts submitted under this section may establish
21 that, for any given period of time for which evi-
22 dence of criteria is lacking, such absence of evi-
23 dence corresponds in time with official acts of
24 the Federal or relevant State Government
25 which prohibited or penalized the expression of

1 Indian identity. For such periods of time, the
2 absence of evidence shall not be the basis for
3 declining to acknowledge the petitioner.

4 (3) EXCLUSION.—The following groups and en-
5 tities shall not be eligible to submit a documented
6 petition for recognition by the Commission under
7 this Act:

8 (A) CERTAIN ENTITIES THAT ARE ELIGI-
9 BLE TO RECEIVE SERVICES FROM THE BU-
10 REAU.—Indian tribes, organized bands, pueblos,
11 communities, and Alaska Native entities that
12 are recognized by the Secretary as of the date
13 of enactment of this Act as eligible to receive
14 services from the Bureau.

15 (B) CERTAIN SPLINTER GROUPS, POLIT-
16 ICAL FACTIONS, AND COMMUNITIES.—Splinter
17 groups, political factions, communities, or
18 groups of any character that separate from the
19 main body of an Indian tribe that, at the time
20 of that separation, is recognized as an Indian
21 tribe by the Secretary, unless the group, fac-
22 tion, or community is able to establish clearly
23 that the group, faction, or community has func-
24 tioned throughout history until the date of the

1 documented petition as an autonomous Indian
2 tribal entity.

3 (C) CERTAIN GROUPS THAT HAVE PRE-
4 VIOUSLY SUBMITTED DOCUMENTED PETI-
5 TIONS.—Groups, or successors in interest of
6 groups, that before the date of enactment of
7 this Act, have petitioned for and been denied or
8 refused recognition based on the merits of their
9 petition as an Indian tribe under regulations
10 prescribed by the Secretary (other than an In-
11 dian group described in paragraph (2)(A)).
12 Nothing in this subparagraph shall be con-
13 strued as excluding any group that Congress
14 has identified as Indian, but has not identified
15 as an Indian tribe.

16 (D) INDIAN GROUPS SUBJECT TO TERMINATION.—Any Indian group whose relationship
17 with the Federal Government was expressly terminated by an Act of Congress.
18

20 (4) TRANSFER OF DOCUMENTED PETITION.—

21 (A) IN GENERAL.—Notwithstanding any
22 other provision of law, not later than 30 days
23 after the date on which all of the members of
24 the Commission have been appointed and con-
25 firmed by the Senate under section 4(b), the

6 (B) CESSATION OF CERTAIN AUTHORITIES
7 OF SECRETARY.—Notwithstanding any other
8 provision of law, on the date of the transfer
9 under subparagraph (A), the Secretary and the
10 Department shall cease to have any authority to
11 recognize or acknowledge, on behalf of the Fed-
12 eral Government, any Indian group as an In-
13 dian tribe.

14 (C) DETERMINATION OF ORDER OF SUB-
15 MISSION OF TRANSFERRED DOCUMENTED PETI-
16 TIONS.—Documented petitions transferred to
17 the Commission under subparagraph (A) shall,
18 for purposes of this Act, be considered as hav-
19 ing been submitted to the Commission in the
20 same order as those documented petitions were
21 submitted to the Department.

22 (b) DOCUMENTED PETITION FORM AND CONTENT.—
23 Except as provided in subsection (c), any documented peti-
24 tion submitted under subsection (a) by an Indian group
25 shall be in any readable form that clearly indicates that

1 the documented petition is a documented petition request-
2 ing the Commission to recognize the Indian group as an
3 Indian tribe and that contains detailed, specific evidence
4 concerning each of the following items:

5 (1) STATEMENT OF FACTS.—A statement of
6 facts and an analysis of such facts establishing that
7 the petitioner has been identified as an American In-
8 dian entity on a substantially continuous basis since
9 1900. Evidence that the character of the group as
10 an Indian entity has from time to time been denied
11 shall not be considered to be conclusive evidence that
12 this criterion has not been met. Evidence that the
13 Commission may rely on in determining the Indian
14 identity of a group may include any 1 or more of the
15 following items:

16 (A) IDENTIFICATION OF PETITIONER.—An
17 identification of the petitioner as an Indian en-
18 tity by any department, agency, or instrumen-
19 tality of the Federal Government.

20 (B) RELATIONSHIP OF PETITIONER WITH
21 STATE GOVERNMENT.—A relationship between
22 the petitioner and any State government, based
23 on an identification of the petitioner as an In-
24 dian entity.

1 (C) RELATIONSHIP OF PETITIONER WITH
2 A POLITICAL SUBDIVISION OF A STATE.—Deals
3 ings of the petitioner with a county or political
4 subdivision of a State in a relationship based on
5 the Indian identity of the petitioner.

6 (D) IDENTIFICATION OF PETITIONER ON
7 THE BASIS OF CERTAIN RECORDS.—An identi-
8 fication of the petitioner as an Indian entity by
9 records in a private or public archive, court-
10 house, church, or school.

11 (E) IDENTIFICATION OF PETITIONER BY
12 CERTAIN EXPERTS.—An identification of the
13 petitioner as an Indian entity by an anthropolo-
14 gist, historian, or other scholar.

15 (F) IDENTIFICATION OF PETITIONER BY
16 CERTAIN MEDIA.—An identification of the peti-
17 tioner as an Indian entity in a newspaper, book,
18 or similar medium.

19 (G) IDENTIFICATION OF PETITIONER BY
20 ANOTHER INDIAN TRIBE OR ORGANIZATION.—
21 An identification of the petitioner as an Indian
22 entity by another Indian tribe or by a national,
23 regional, or State Indian organization.

24 (H) IDENTIFICATION OF PETITIONER BY A
25 FOREIGN GOVERNMENT OR INTERNATIONAL OR-

1 GANIZATION.—An identification of the petitioner as an Indian entity by a foreign government or an international organization.

4 (I) OTHER EVIDENCE OF IDENTIFICATION.—Such other evidence of identification as may be provided by a person or entity other than the petitioner or a member of the membership of the petitioner.

9 (2) EVIDENCE OF COMMUNITY.—

10 (A) IN GENERAL.—A statement of facts and an analysis of such facts establishing that a predominant portion of the membership of the petitioner—

14 (i) comprises a community distinct from those communities surrounding that community; and

17 (ii) has existed as a community from historical times to the present.

19 (B) EVIDENCE.—Evidence that the Commission may rely on in determining that the petitioner meets the criteria described in clauses (i) and (ii) of subparagraph (A) may include 1 or more of the following items:

24 (i) MARRIAGES.—Significant rates of marriage within the group, or, as may be

1 culturally required, patterned out-mar-
2 riages with other Indian populations.

3 (ii) SOCIAL RELATIONSHIPS.—Signifi-
4 cant social relationships connecting indi-
5 vidual members.

6 (iii) SOCIAL INTERACTION.—Signifi-
7 cant rates of informal social interaction
8 which exist broadly among the members of
9 a group.

10 (iv) SHARED ECONOMIC ACTIVITY.—A
11 significant degree of shared or cooperative
12 labor or other economic activity among the
13 membership.

14 (v) DISCRIMINATION OR OTHER SO-
15 CIAL DISTINCTIONS.—Evidence of strong
16 patterns of discrimination or other social
17 distinctions by nonmembers.

18 (vi) SHARED RITUAL ACTIVITY.—
19 Shared sacred or secular ritual activity en-
20 compassing most of the group.

21 (vii) CULTURAL PATTERNS.—Cultural
22 patterns that—

23 (I) are shared among a signifi-
24 cant portion of the group that are dif-
25 ferent from the cultural patterns of

1 the non-Indian populations with whom
2 the group interacts;

(III) may include language, kinship, or religious organizations, or religious beliefs and practices.

9 (viii) COLLECTIVE INDIAN IDEN-
10 TITY.—The persistence of a named, collec-
11 tive Indian identity continuously over a pe-
12 riod of more than 50 years, notwith-
13 standing changes in name.

14 (ix) HISTORICAL POLITICAL INFLU-
15 ENCE.—A demonstration of historical po-
16 litical influence pursuant to the criteria set
17 forth in paragraph (3).

18 (x) EXTENDED KINSHIP TIES.—Not
19 less than 50 percent of the tribal members
20 exhibit collateral kinship ties through gen-
21 erations to the third degree.

22 (C) CRITERIA FOR SUFFICIENT EVI-
23 DENCE.—The Commission shall consider the
24 petitioner to have provided sufficient evidence
25 of community at a given point in time if the pe-

1 titioner has provided evidence that dem-
2 onstrates any one of the following:

3 (i) RESIDENCE OF MEMBERS.—More
4 than 50 percent of the members of the
5 group of the petitioner reside in a par-
6 ticular geographical area exclusively or al-
7 most exclusively composed of members of
8 the group, and the balance of the group
9 maintains consistent social interaction with
10 some members of the community.

11 (ii) MARRIAGES.—Not less than $\frac{1}{3}$ of
12 the marriages of the group are between
13 members of the group.

14 (iii) DISTINCT CULTURAL PAT-
15 TERNS.—Not less than 50 percent of the
16 members of the group maintain distinct
17 cultural patterns including language, kin-
18 ship, or religious organizations, or religious
19 beliefs or practices.

20 (iv) COMMUNITY SOCIAL INSTITU-
21 TIONS.—Distinct community social institu-
22 tions encompassing 50 percent of the mem-
23 bers of the group, such as kinship organi-
24 zations, formal or informal economic co-
25 operation, or religious organizations.

1 (v) APPLICABILITY OF CRITERIA.—

2 The group has met the criterion in para-
3 graph (3) using evidence described in para-
4 graph (3)(B).

5 (3) AUTONOMOUS ENTITY.—

6 (A) IN GENERAL.—A statement of facts
7 and an analysis of such facts establishing that
8 the petitioner has maintained political influence
9 or authority over its members as an autono-
10 mous entity from historical times until the time
11 of the documented petition. The Commission
12 may rely on 1 or more of the following items in
13 determining whether a petitioner meets the cri-
14 terion described in the preceding sentence:

15 (i) MOBILIZATION OF MEMBERS.—

16 The group is capable of mobilizing signifi-
17 cant numbers of members and significant
18 resources from its members for group pur-
19 poses.

20 (ii) ISSUES OF PERSONAL IMPOR-
21 TANCE.—Most of the membership of the
22 group consider issues acted upon or taken
23 by group leaders or governing bodies to be
24 of personal importance.

5 (iv) LEVEL OF APPLICATION OF CRI-
6 TERIA.—The group meets the criterion de-
7 scribed in paragraph (2) at more than a
8 minimal level.

9 (v) INTRAGROUP CONFLICTS.—There
10 are intragroup conflicts which show con-
11 troversy over valued group goals, prop-
12 erties, policies, processes, or decisions.

13 (vi) CONTINUOUS LINE OF GROUP
14 LEADERS.—A continuous line of group
15 leaders with a description of the means of
16 selection or acquiescence by a majority of
17 the group's members.

18 (B) EVIDENCE OF EXERCISE OF POLITICAL
19 INFLUENCE OR AUTHORITY.—The Commission
20 shall consider that a petitioner has provided
21 sufficient evidence to demonstrate the exercise
22 of political influence or authority at a given
23 point in time by demonstrating that group lead-
24 ers or other mechanisms exist or have existed
25 that accomplish the following:

1 (i) ALLOCATION OF GROUP RE-
2 SOURCES.—Allocate group resources such
3 as land, residence rights, or similar re-
4 sources on a consistent basis.

5 (ii) SETTLEMENT OF DISPUTES.—Set-
6 tle disputes between members or subgroups
7 such as clans or lineages by mediation or
8 other means on a regular basis.

9 (iii) INFLUENCE ON BEHAVIOR OF IN-
10 DIVIDUAL MEMBERS.—Exert strong influ-
11 ence on the behavior of individual mem-
12 bers, such as the establishment or mainte-
13 nance of norms and the enforcement of
14 sanctions to direct or control behavior.

15 (iv) ECONOMIC SUBSISTENCE ACTIVI-
16 TIES.—Organize or influence economic
17 subsistence activities among the members,
18 including shared or cooperative labor.

19 (C) TEMPORALITY OF SUFFICIENCY OF
20 EVIDENCE.—A group that has met the require-
21 ments of paragraph (2)(C) at any point in time
22 shall be considered to have provided sufficient
23 evidence to meet the criterion described in sub-
24 paragraph (A) at that point in time.

9 (5) LIST OF MEMBERS.—

10 (A) IN GENERAL.—A list of all then cur-
11 rent members of the petitioner, including the
12 full name (and maiden name, if any), date, and
13 place of birth, and then current residential ad-
14 dress of each member, a copy of each available
15 former list of members based on the criteria de-
16 fined by the petitioner, and a statement describ-
17 ing the methods used in preparing those lists.

18 (B) REQUIREMENTS FOR MEMBERSHIP.—
19 In order for the Commission to consider the
20 members of the group to be members of an In-
21 dian tribe for the purposes of the documented
22 petition, that membership shall be required to
23 consist of established descendancy from an In-
24 dian group that existed historically, or from his-

1 torical Indian groups that combined and func-
2 tioned as a single autonomous entity.

3 (C) EVIDENCE OF TRIBAL MEMBERSHIP.—

4 Evidence of tribal membership required by the
5 Commission for a determination of tribal mem-
6 bership shall include the following items:

7 (i) DESCENDANCY ROLLS.—

12 (ii) CERTAIN OFFICIAL RECORDS.—

20 (iii) ENROLLMENT RECORDS.—

21 Church, school, and other similar enrollment
22 records identifying then present
23 members or ancestors of then present
24 members as being descendants of a historic
25 tribe or historic tribes that combined and

3 (iv) AFFIDAVITS OF RECOGNITION.—
4 Affidavits of recognition by tribal elders,
5 leaders, or the tribal governing body identi-
6 fying then present members or ancestors of
7 then present members as being descend-
8 ants of 1 or more historic tribes that com-
9 bined and functioned as a single autono-
10 mous political entity.

11 (v) OTHER RECORDS OR EVIDENCE.—

12 Other records or evidence based upon first-

13 hand experience of historians, anthropolo-

14 gists, and genealogists with established ex-

15 pertise on the petitioner or Indian entities

16 in general, identifying then present mem-

17 bers or ancestors of then present members

18 as being descendants of 1 or more historic

19 tribes that combined and functioned as a

20 single autonomous political entity.

21 (c) EXCEPTIONS.—A documented petition from an
22 Indian group that is able to demonstrate by a preponder-
23 ance of the evidence that the group was, or is the suc-
24 cessor in interest to, a—

25 (1) party to a treaty or treaties:

10 (4) group that has been denominated a tribe by
11 an Act of Congress or Executive order,

12 shall be required to establish the criteria set forth in this
13 section only with respect to the period beginning on the
14 date of the applicable action described in paragraph (1),
15 (2), (3), or (4) and ending on the date of submission of
16 the documented petition.

17 (d) DEADLINE FOR SUBMISSION.—

1 tioner. A petitioner who has submitted a letter of in-
2 tent or had a letter of intent transferred to the Com-
3 mission under section 5 shall be required to submit
4 a documented petition within 3 years after the date
5 of the first meeting of the Commission to the Com-
6 mission. No letters of intent will be accepted by the
7 Commission after 3 years after the date of the first
8 meeting of the Commission.

9 **SEC. 6. NOTICE OF RECEIPT OF DOCUMENTED PETITION.**

10 (a) PETITIONER.—

11 (1) IN GENERAL.—Not later than 30 days after
12 a documented petition is submitted or transferred to
13 the Commission under section 5(a), the Commission
14 shall—

15 (A) send an acknowledgement of receipt in
16 writing to the petitioner; and

17 (B) publish in the Federal Register a no-
18 tice of that receipt, including the name, loca-
19 tion, and mailing address of the petitioner and
20 such other information that—

21 (i) identifies the entity that submitted
22 the documented petition and the date the
23 documented petition was received by the
24 Commission;

9 (A) IN GENERAL.—With respect to a docu-
10 mented petition that is transferred to the Com-
11 mission under section 5(a)(4), the notice pro-
12 vided to the petitioner, shall, in addition to pro-
13 viding the information specified in paragraph
14 (1), inform the petitioner whether the docu-
15 mented petition constitutes a documented peti-
16 tion that meets the requirements of section 5.

17 (B) AMENDED PETITIONS.—If the petition
18 described in subparagraph (A) is not a docu-
19 mented petition, the Commission shall notify
20 the petitioner that the petitioner may, not later
21 than 120 days after the date of the notice, sub-
22 mit to the Commission an amended petition
23 that is a documented petition for review under
24 section 7.

1 (C) EFFECT OF AMENDED PETITION.—To
2 the extent practicable, the submission of an
3 amended petition by a petitioner by the date
4 specified in this paragraph shall not affect the
5 order of consideration of the petition by the
6 Commission.

7 (b) OTHERS.—In addition to providing the notifica-
8 tion required under subsection (a), the Commission shall
9 notify, in writing, the Governor and attorney general of,
10 and each federally recognized Indian tribe within, any
11 State in which a petitioner resides.

12 (c) PUBLICATION; OPPORTUNITY FOR SUPPORTING
13 OR OPPOSING SUBMISSIONS.—

20 (2) OPPORTUNITY FOR SUPPORTING OR OPPOS-
21 ING SUBMISSIONS.—

22 (A) IN GENERAL.—Each notice published
23 under paragraph (1) shall include, in addition
24 to the information described in subsection (a),
25 notice of opportunity for other parties involved

1 with the petitioners to submit factual or legal
2 arguments in support of, or in opposition to,
3 the documented petition.

4 (B) COPY TO PETITIONER.—A copy of any
5 submission made under subparagraph (A) shall
6 be provided to the petitioner within 90 days
7 upon receipt by the Commission.

8 (C) RESPONSE.—The petitioner shall be
9 provided an opportunity to respond within 90
10 days to any submission made under subpara-
11 graph (A) before a determination on the docu-
12 mented petition by the Commission.

13 **SEC. 7. PROCESSING THE DOCUMENTED PETITION.**

14 (a) REVIEW.—

15 (1) IN GENERAL.—Upon receipt of a docu-
16 mented petition submitted or transferred under sec-
17 tion 5(a) or submitted under section 6(a)(2)(B), the
18 Commission shall conduct a review to determine
19 whether the petitioner is entitled to be recognized as
20 an Indian tribe.

21 (2) CONTENT OF REVIEW.—The review con-
22 ducted under paragraph (1) shall include consider-
23 ation of the documented petition, supporting evi-
24 dence, and the factual statements contained in the
25 documented petition.

17 (b) CONSIDERATION.—

1 5(a)(4) or is an amended petition submitted pursuant
2 to section 6(a)(2)(B)). The Commission shall es-
3 tablish a priority register that includes documented
4 petitions that are pending before the Department as
5 of the date of the first meeting of the Commission.

6 (2) PRIORITY CONSIDERATION.—Each docu-
7 mented petition (that is submitted or transferred to
8 the Commission pursuant to section 5(a) or that is
9 submitted to the Commission pursuant to section
10 6(a)(2)(B)) of an Indian group that meets 1 or more
11 of the requirements set forth in section 5(c) shall re-
12 ceive priority consideration over a documented peti-
13 tion submitted by any other Indian group.

14 SEC. 8. PRELIMINARY HEARING.

15 (a) IN GENERAL.—Not later than 60 days after the
16 receipt of a documented petition by the Commission sub-
17 mitted or transferred under section 5(a) or submitted to
18 the Commission pursuant to section 6(a)(2)(B), the Com-
19 mission shall set a date for a preliminary hearing, which
20 shall in no instance be held later than 180 days after re-
21 ceipt of the documented petition. At the preliminary hear-
22 ing, the petitioner and any other interested party may pro-
23 vide evidence concerning the status of the petitioner.

24 (b) DETERMINATION.—

5 (A) to extend Federal acknowledgment of
6 the petitioner as an Indian tribe to the peti-
7 tioner; or

14 (c) INFORMATION TO BE PROVIDED PREPARATORY
15 TO AN ADJUDICATORY HEARING.—

20 (A)(i) not later than 30 days after the date
21 of such determination, make available appro-
22 priate evidentiary records of the Commission to
23 the petitioner to assist the petitioner in pre-
24 paring for the adjudicatory hearing; and

17 SEC. 9. ADJUDICATORY HEARING.

18 (a) IN GENERAL.—Not later than 180 days after the
19 conclusion of a preliminary hearing under section 8(a), the
20 Commission shall afford a petitioner who is subject to sec-
21 tion 8(b)(1)(B) an adjudicatory hearing. The subject of
22 the adjudicatory hearing shall be the list of deficiencies
23 and omissions provided under section 8(c)(1)(B) and shall
24 be conducted pursuant to sections 554, 556, and 557 of
25 title 5, United States Code.

1 (b) TESTIMONY FROM STAFF OF COMMISSION.—In
2 any hearing held under subsection (a), the Commission
3 shall require testimony from the acknowledgement and re-
4 search staff of the Commission or other witnesses involved
5 in the preliminary determination. Any such testimony
6 shall be subject to cross-examination by the petitioner.

7 (c) EVIDENCE BY PETITIONER.—In any hearing held
8 under subsection (a), the petitioner may provide such evi-
9 dence as the petitioner considers appropriate.

10 (d) DETERMINATION BY COMMISSION.—Not later
11 than 60 days after the conclusion of any hearing held
12 under subsection (a), the Commission shall—

13 (1) make a determination concerning the exten-
14 sion or denial of Federal acknowledgment of the pe-
15 titioner as an Indian tribe to the petitioner;

16 (2) publish the determination of the Commis-
17 sion under paragraph (1) in the Federal Register;
18 and

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

21 **SEC. 10. APPEALS.**

22 (a) IN GENERAL.—Not later than 60 days after the
23 date that the Commission publishes a determination under
24 section 9(d), the petitioner may appeal the determination

1 to the United States District Court for the District of Co-
2 lumbia.

3 (b) ATTORNEY FEES.—If the petitioner prevails in
4 an appeal made under subsection (a), the petitioner shall
5 be eligible for an award of reasonable attorney fees and
6 costs under section 504 of title 5, United States Code,
7 or section 2412 of title 28, United States Code, whichever
8 is applicable.

9 **SEC. 11. EFFECT OF DETERMINATIONS.**

10 A determination by the Commission under section
11 9(d) that an Indian group is recognized by the Federal
12 Government as an Indian tribe shall not have the effect
13 of depriving or diminishing—

14 (1) the right of any other Indian tribe to govern
15 the reservation of such other tribe as that reserva-
16 tion existed before the recognition of that Indian
17 group, or as that reservation may exist thereafter;

18 (2) any property right held in trust or recog-
19 nized by the United States for that other Indian
20 tribe as that property existed before the recognition
21 of that Indian group; or

22 (3) any previously or independently existing
23 claim by a petitioner to any such property right held
24 in trust by the United States for that other Indian

1 tribe before the recognition by the Federal Govern-
2 ment of that Indian group as an Indian tribe.

3 **SEC. 12. IMPLEMENTATION OF DECISIONS.**

4 (a) **ELIGIBILITY FOR SERVICES AND BENEFITS.—**

5 (1) **IN GENERAL.**—Subject to paragraph (2),
6 upon recognition by the Commission of a petitioner
7 as an Indian tribe under this Act, the Indian tribe
8 shall—

9 (A) be eligible for the services and benefits
10 from the Federal Government that are available
11 to other federally recognized Indian tribes by
12 virtue of their status as Indian tribes with a
13 government-to-government relationship with the
14 United States; and

15 (B) have the responsibilities, obligations,
16 privileges, and immunities of those Indian
17 tribes.

18 (2) **PROGRAMS OF THE BUREAU.—**

19 (A) **IN GENERAL.**—The recognition of an
20 Indian group as an Indian tribe by the Commis-
21 sion under this Act shall not create an imme-
22 diate entitlement to programs of the Bureau in
23 existence on the date of the recognition.

24 (B) **AVAILABILITY OF PROGRAMS.—**

1 (i) IN GENERAL.—The programs de-
2 scribed in subparagraph (A) shall become
3 available to the Indian tribe upon the ap-
4 propriation of funds.

5 (ii) REQUESTS FOR APPROPRIA-
6 TIONS.—The Secretary and the Secretary
7 of Health and Human Services shall for-
8 ward budget requests for funding the pro-
9 grams for the Indian tribe pursuant to the
10 needs determination procedures established
11 under subsection (b).

12 (b) NEEDS DETERMINATION AND BUDGET RE-
13 QUEST.—

10 SEC. 13. ANNUAL REPORT CONCERNING COMMISSION'S AC-
11 TIVITIES.

12 (a) LIST OF RECOGNIZED TRIBES.—Not later than
13 90 days after the first meeting of the Commission, and
14 annually on or before each January 30 thereafter, the
15 Commission shall publish in the Federal Register a list
16 of all Indian tribes that—

17 (1) are recognized by the Federal Government;
18 and

19 (2) receive services from the Bureau.

20 (b) ANNUAL REPORT —

1 mittee on Resources of the House of Representatives
2 that describes the activities of the Commission.

3 (2) CONTENT OF REPORTS.—Each report sub-
4 mitted under this subsection shall include, at a min-
5 imum, for the year that is the subject of the
6 report—

7 (A) the number of documented petitions
8 pending at the beginning of the year and the
9 names of the petitioners;

10 (B) the number of documented petitions
11 received during the year and the names of the
12 petitioners;

13 (C) the number of documented petitions
14 the Commission approved for acknowledgment
15 during the year and the names of the acknowl-
16 edged petitioners;

17 (D) the number of documented petitions
18 the Commission denied for acknowledgment
19 during the year and the names of the peti-
20 tioners; and

21 (E) the status of all pending documented
22 petitions on the date of the report and the
23 names of the petitioners.

1 **SEC. 14. ACTIONS BY PETITIONERS FOR ENFORCEMENT.**

2 Any petitioner may bring an action in the district
3 court of the United States for the district in which the
4 petitioner resides, or the United States District Court for
5 the District of Columbia, to enforce the provisions of this
6 Act, including any time limitations within which actions
7 are required to be taken, or decisions made, under this
8 Act. The district court shall issue such orders (including
9 writs of mandamus) as may be necessary to enforce the
10 provisions of this Act.

11 **SEC. 15. REGULATIONS.**

12 The Commission may, in accordance with applicable
13 requirements of title 5, United States Code, promulgate
14 and publish such regulations as may be necessary to carry
15 out this Act.

16 **SEC. 16. GUIDELINES AND ADVICE.**

17 (a) **GUIDELINES.**—Not later than 90 days after the
18 date of the first meeting of the Commission, the Commis-
19 sion shall make available to Indian groups suggested
20 guidelines for the format of documented petitions, includ-
21 ing general suggestions and guidelines concerning where
22 and how to research information that is required to be
23 included in a documented petition. The examples included
24 in the guidelines shall not preclude the use of any other
25 appropriate format.

1 (b) RESEARCH ADVICE.—The Commission may, upon
2 request, provide suggestions and advice to any petitioner
3 with respect to the research of the petitioner concerning
4 the historical background and Indian identity of that peti-
5 tioner. The Commission shall not be responsible for con-
6 ducting research on behalf of the petitioner.

7 **SEC. 17. ASSISTANCE TO PETITIONERS.**

8 (a) GRANTS.—

9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services may award grants to Indian groups
11 seeking Federal recognition as Indian tribes to en-
12 able the Indian groups to—

13 (A) conduct the research necessary to sub-
14 stantiate documented petitions under this Act;
15 and

16 (B) prepare documentation necessary for
17 the submission of a documented petition under
18 this Act.

19 (2) TREATMENT OF GRANTS.—The grants
20 made under this subsection shall be in addition to
21 any other grants the Secretary of Health and
22 Human Services is authorized to provide under any
23 other provision of law.

24 (b) COMPETITIVE AWARD.—The grants made under
25 subsection (a) shall be awarded competitively on the basis

1 of objective criteria prescribed in regulations promulgated
2 by the Secretary of Health and Human Services.

3 **SEC. 18. PROTECTION OF CERTAIN PRIVILEGED INFORMA-
4 TION.**

5 Notwithstanding any other provision of law, upon the
6 effective date of this Act, when responding to any requests
7 for information on petitions and related materials filed by
8 a group seeking Federal recognition as an Indian tribe
9 pursuant to part 83 of title 25 of the Code of Federal
10 Regulations, including petitions and related materials
11 transferred to the Commission from the Department
12 under section 5(a)(4), as well as related materials located
13 within the Department that have yet to be transferred to
14 the Commission, the Department and the Commission
15 shall exclude materials identified by the petitioning group
16 as information related to religious practices or sacred
17 sites, and which the group is forbidden to disclose except
18 for the limited purpose of Department and Commission
19 review.

20 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) COMMISSION.—There are authorized to be appro-
22 priated to the Commission to carry out this Act (other
23 than section 17) such sums as are necessary for each of
24 fiscal years 2002 through 2014.

1 (b) SECRETARY OF HHS.—There are authorized to
2 be appropriated to the Secretary of Health and Human
3 Services to carry out section 17 such sums as are nec-
4 essary for each of fiscal years 2002 through 2014.

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