

109TH CONGRESS
1ST SESSION

S. 437

To expedite review of the Grand River Band of Ottawa Indians of Michigan to secure a timely and just determination of whether that group is entitled to recognition as a Federal Indian tribe.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2005

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

A BILL

To expedite review of the Grand River Band of Ottawa Indians of Michigan to secure a timely and just determination of whether that group is entitled to recognition as a Federal Indian tribe.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Grand River Band of Ottawa Indians of Michigan Refer-
6 ral Act”.

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. Definitions.

TITLE I—REFERRAL TO THE SECRETARY

Sec. 101. Purpose.

Sec. 102. Report.

Sec. 103. Action by Congress.

TITLE II—MEMBERSHIP; JURISDICTION; LAND

Sec. 201. Recognition.

Sec. 202. Membership.

Sec. 203. Federal services and benefits.

Sec. 204. Rights of the Tribe.

Sec. 205. Tribal funds.

Sec. 206. Jurisdiction of trust land.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **BAND; TRIBE.**—The terms “Band” and
 4 “Tribe” mean the Grand River Band of the Ottawa
 5 Indians of Michigan.

6 (2) **DATE OF RECOGNITION.**—The term “date
 7 of recognition” means the date on which recognition
 8 of the Tribe by the Secretary was published in the
 9 Federal Register under section 201.

10 (3) **INDIAN TRIBE.**—The term “Indian tribe”
 11 has the meaning given the term in section 4 of the
 12 Indian Self-Determination and Education Assistance
 13 Act (25 U.S.C. 450b).

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

1 **TITLE I—REFERRAL TO THE**
2 **SECRETARY**

3 **SEC. 101. PURPOSE.**

4 The purpose of this title is to obtain an expedited
5 review of the petition of the Band in order to secure a
6 timely and just determination of whether the Band is enti-
7 tled to recognition as a Federal Indian tribe under the
8 rules that govern the recognition of a new group as an
9 Indian tribe.

10 **SEC. 102. REPORT.**

11 (a) IN GENERAL.—Not later than August 31, 2005,
12 the Secretary shall review the petition of the Band and
13 submit to Congress a report describing the findings of the
14 Secretary regarding whether—

15 (1) the majority of members of the Band are
16 descendants of, and political successors to, signato-
17 ries of—

18 (A) the treaty made and concluded at Chi-
19 cago, in the State of Illinois, between Lewis
20 Cass and Solomon Sibley, Commissioners of the
21 United States, and the Ottawa, Chippewa, and
22 Pottawatamie, Nations of Indians on August
23 29, 1821 (7 Stat. 218);

24 (B) the treaty made and concluded at the
25 city of Washington in the District of Columbia,

between Henry R. Schoolcraft, commissioner on the part of the United States, and the Ottawa and Chippewa nations of Indians, by their chiefs and delegates on March 28, 1836 (7 Stat. 491); and

(C) the articles of agreement and convention made and concluded at the city of Detroit, in the State of Michigan, July 31, 1855, between George W. Manypenny and Henry C. Gilbert, commissioners on the part of the United States, and the Ottawa and Chippewa Indians of Michigan, parties to the treaty of March 28, 1836;

(2) the history of the Band parallels the history of Indian tribes the members of which are descendants of the signatories to the treaties described in subparagraphs (B) and (C) of paragraph (1), including—

(A) the Grand Traverse Band of Ottawa and Chippewa Indians;

(B) the Sault Ste. Marie Tribe of Chippewa Indians;

(C) the Bay Mills Band of Chippewa Indians;

1 (D) the Little Traverse Bay Band of
2 Odawa Indians; and

3 (E) the Little River Band of Ottawa Indi-
4 ans;

5 (3) the majority of members of the Band con-
6 tinue to reside in the ancestral homeland of the
7 Band (which is now the Western lower quadrant of
8 the State of Michigan), as recognized in the treaties
9 described in paragraph (1);

10 (4)(A) the Band filed for reorganization of the
11 tribal government of the Band in 1935 under the
12 Act of June 18, 1934 (commonly referred to as the
13 “Indian Reorganization Act”) (25 U.S.C. 461 et
14 seq.);

15 (B) the Commissioner of Indian Affairs attested
16 to the continued social and political existence of the
17 Band and concluded that the Band was eligible for
18 reorganization; and

19 (C) due to a lack of Federal appropriations to
20 implement the provisions of the Indian Reorganiza-
21 tion Act, the Band was denied the opportunity to re-
22 organize;

23 (5)(A) the Band continued political and social
24 existence as a viable tribal government during the
25 participation of the Band in the Northern Michigan

1 Ottawa Association in 1948, which subsequently
2 pursued a successful land claim with the Indian
3 Claims Commission; and

4 (B) the Band carried out tribal governmental
5 functions through the Northern Michigan Ottawa
6 Association while retaining control over local deci-
7 sions;

8 (6) the Federal Government, the government of
9 the State of Michigan, and local governments have
10 had continuous dealings with recognized political
11 leaders of the Band from 1836 to the present; and

12 (7) the Band was included in the Michigan In-
13 dian Land Claims Settlement Act (Public Law 105–
14 143; 111 Stat. 2652) and was required to submit a
15 fully documented petition not later than December
16 15, 2000, to qualify for land claim funds set aside
17 for the Band, which the Secretary segregated and
18 holds in trust for the Band pending recognition as
19 the respective share of funds of the Band under that
20 Act.

21 (b) CONSULTATION.—In carrying out this section,
22 the Secretary shall consult with and request information
23 from—

24 (1) elected leaders of the Band; and

1 (2) anthropologists, ethno-historians, and gene-
2 alogists associated with the Band;

3 (3) attorneys of the Band; and

4 (4) other experts, as the Secretary determines
5 appropriate.

6 (c) CONCLUSION.—

7 (1) POSITIVE REPORT.—Not later than August
8 31, 2005, if the Secretary determines by a prepon-
9 derance of the evidence that the Band satisfies each
10 condition of subsection (a), the Secretary shall sub-
11 mit to Congress a positive report indicating that de-
12 termination.

13 (2) NEGATIVE REPORT.—Not later than August
14 31, 2005, if the Secretary determines by a prepon-
15 derance of the evidence that the Band fails to satisfy
16 a condition of subsection (a), the Secretary shall
17 submit to Congress a negative report indicating that
18 determination.

19 (d) FAILURE TO SUBMIT REPORT.—If the Secretary
20 fails to submit to Congress a report in accordance with
21 subsection (c)—

22 (1) not later than November 30, 2005, the Sec-
23 retary shall recognize the Band as an Indian tribe;
24 and

25 (2) title II shall apply to the Band.

1 **SEC. 103. ACTION BY CONGRESS.**

2 (a) ACTION BY DEADLINE.—

3 (1) IN GENERAL.—If Congress acts on the re-
4 port of the Secretary under section 102(c) by the
5 date that is 60 days after the date of receipt of the
6 report, the Secretary shall carry out the actions de-
7 scribed in this subsection.

8 (2) POSITIVE REPORT.—If the Secretary sub-
9 mitted a positive report under section 102(c)(1)—

10 (A) not later than November 30, 2005, the
11 Secretary shall recognize the Band as an Indian
12 tribe; and

13 (B) title II shall apply to the Band.

14 (3) NEGATIVE REPORT.—If the Secretary sub-
15 mitted a negative report under section 102(c)(2), the
16 Secretary shall—

17 (A) return the petition of the Band to the
18 list maintained by the Office of Federal Ac-
19 knowledgment; and

20 (B) grant the Band any opportunity avail-
21 able to the Band to prove the status of the
22 Band as an Indian tribe.

23 (b) FAILURE TO ACT BY DEADLINE.—

24 (1) IN GENERAL.—If Congress fails to act on
25 the report of the Secretary under section 102(c) by
26 the date that is 60 days after the date of receipt of

1 the report, the Secretary shall carry out the actions
2 described in this subsection.

3 (2) POSITIVE REPORT.—If the Secretary sub-
4 mitted a positive report under section 102(c)(1)—

5 (A) not later than November 30, 2005, the
6 Secretary shall recognize the Band as an Indian
7 tribe; and

8 (B) title II shall apply to the Band.

9 (3) NEGATIVE REPORT.—If the Secretary sub-
10 mitted a negative report under section 102(c)(2), the
11 Secretary shall—

12 (A) return the petition of the Band to the
13 list maintained by the Office of Federal Ac-
14 knowledgment; and

15 (B) grant the Band any opportunity avail-
16 able to the Band to prove the status of the
17 Band as an Indian tribe.

18 **TITLE II—MEMBERSHIP;**
19 **JURISDICTION; LAND**

20 **SEC. 201. RECOGNITION.**

21 Not later than November 30, 2005, if subsection
22 (a)(2) or (b)(2) of section 103 applies, the Secretary
23 shall—

24 (1) recognize the Tribe; and

1 (2) publish notice of the recognition by the Sec-
2 retary in the Federal Register.

3 **SEC. 202. MEMBERSHIP.**

4 (a) LIST OF PRESENT MEMBERSHIP.—Not later
5 than 120 days after the date of recognition, the Tribe shall
6 submit to the Secretary a list of all individuals that were
7 members of the Tribe on the date of recognition.

8 (b) LIST OF INDIVIDUALS ELIGIBLE FOR MEMBER-
9 SHIP.—

10 (1) IN GENERAL.—Not later than the date that
11 is 18 months after the date of recognition, the Tribe
12 shall submit to the Secretary a membership roll list-
13 ing all individuals enrolled for membership in the
14 Tribe.

15 (2) QUALIFICATIONS.—The qualifications for
16 inclusion on the membership roll of the Tribe shall
17 be determined by the Tribe, in consultation with the
18 Secretary, based on the membership clause in the
19 governing document of the Tribe.

20 (3) PUBLICATION OF NOTICE.—On receiving
21 the membership roll under paragraph (1), the Sec-
22 retary shall publish notice of the membership roll in
23 the Federal Register.

24 (c) MAINTENANCE OF ROLLS.—The Tribe shall en-
25 sure that the membership roll of the Tribe is maintained.

1 **SEC. 203. FEDERAL SERVICES AND BENEFITS.**

2 (a) IN GENERAL.—Not later than October 31, 2005,
3 the Tribe and each member of the Tribe shall be eligible
4 for all services and benefits provided by the Federal Gov-
5 ernment to Indians because of their status as Indians
6 without regard to—

7 (1) the existence of a reservation; or

8 (2) the location of the residence of a member on
9 or near an Indian reservation.

10 (b) JURISDICTION.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 for the purpose of delivering a Federal service to an
13 enrolled member of the Tribe, the jurisdiction of the
14 Tribe extends to—

15 (A) all land and water designated to the
16 Ottawa in the treaties described in subpara-
17 graphs (A) and (B) of section 102(a)(1); and

18 (B) all land and water described in any
19 other treaty that provides for a right of the
20 Tribe.

21 (2) EFFECT OF FEDERAL LAW.—Notwith-
22 standing paragraph (1), the jurisdiction of the Tribe
23 shall be consistent with Federal law.

24 **SEC. 204. RIGHTS OF THE TRIBE.**

25 (a) ABROGATED AND DIMINISHED RIGHTS.—Any
26 right or privilege of the Tribe or any member of the Tribe

1 that was abrogated or diminished before the date of rec-
 2 ognition under section 201 is reaffirmed.

3 (b) EXISTING RIGHTS OF TRIBE.—

4 (1) IN GENERAL.—This Act does not diminish
 5 any right or privilege of the Tribe or any member
 6 of the Tribe that existed prior to the date of recogni-
 7 tion.

8 (2) LEGAL AND EQUITABLE CLAIMS.—Except
 9 as otherwise provided in this Act, nothing in this Act
 10 alters or affects any legal or equitable claim of the
 11 Tribe to enforce any right or privilege reserved by
 12 or granted to the Tribe that was wrongfully denied
 13 to or taken from the Tribe prior to the date of rec-
 14 ognition.

15 (c) FUTURE APPLICATIONS.—This Act does not ad-
 16 dress the merits of, or affect the right of the Tribe to sub-
 17 mit, any future application regarding—

18 (1) placing land into trust; or

19 (2) gaming (as defined in section 4 of the In-
 20 dian Gaming Regulatory Act (25 U.S.C. 2703)).

21 **SEC. 205. TRIBAL FUNDS.**

22 Notwithstanding section 110 of the Michigan Indian
 23 Land Claims Settlement Act (111 Stat. 2663), effective
 24 beginning on the date of enactment of this Act, any funds

1 set aside by the Secretary for use by the Tribe shall be
2 made available to the Tribe.

3 **SEC. 206. JURISDICTION OF TRUST LAND.**

4 (a) IN GENERAL.—The Tribe shall have jurisdiction
5 over all land taken into trust by the Secretary for the ben-
6 efit of the Tribe, to the maximum extent allowed by law.

7 (b) SERVICE AREA.—The Tribe shall have jurisdic-
8 tion over all members of the Tribe that reside in the serv-
9 ice area of the Tribe in matters pursuant to the Indian
10 Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.), as
11 if the members resided on a reservation (as defined in that
12 Act).

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