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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JEAN CARNAHAN, a Senator from the State of Missouri.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, at dawn one hundred and eighty-five years ago tomorrow, Francis Scott Key saw the Stars and Stripes over Fort McHenry and wrote the stirring words of our national anthem that have moved our hearts to patriotism ever since. ''O say does that star spangled banner yet wave, o'er the land of the free and the home of the brave?''

Yes, Lord, thankfully, it does. As our flag flies over the Capitol this morning, we commit ourselves anew to serve You by doing the strategic work of government and by leading our Nation through the present challenges in the way that pleases You. It is good to know that You are not surprised by the needs we bring to You. Help us to see that prayer is how You call us to do what You think is best rather than just a call for You to assist us with what we already have decided. Help us to wait for You, to listen intently to You, and to gain strength to carry out Your best for us, personally and for our Nation. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JEAN CARNAHAN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 13, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEAN CARNAHAN, a Senator from the State of Missouri, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. CARNAHAN thereupon assumed the Chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leader time is reserved.

EXECUTIVE SESSION

NOMINATION OF JOSE E. MARTINEZ, OF FLORIDA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and proceed to the consideration of Executive Calendar No. 961, which the clerk will report.

The legislative clerk read the nomination of Jose E. Martinez, of Florida, to be United States District Judge for the Southern District of Florida.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

Mr. GRAHAM. Madam President, I thank the Judiciary Committee for recognizing the needs of Florida and favorably reporting the nomination of Mr. Jose Martinez.

Jose Martinez's long and impressive legal career makes him an outstanding candidate. Beginning as counsel and now partner at Martinez & Gutierrez, Mr. Martinez has been associated with the firm since 1991. Jose Martinez has served as Assistant United States Attorney in the Southern District of Florida, and Legal Officer for the United States Navy, Judge Advocate General Corps. He took a two-year leave from his firm to become the Regional Director for the Office for Drug Abuse Law Enforcement of the United States Department of Justice.

Mr. Martinez received his undergraduate and law degrees from the University of Miami. He was the President of the highest honorary on campus, the Iron Arrow. His involvement with Student Government ranged from working in the Student Activities Office to becoming the treasurer of the School of Business.

Currently, Mr. Martinez is the vice chairman of the Federal Court Practice Committee of the Florida Bar. He is also a member of the American Bar Association, the Federal Bar Association, the Cuban American Bar Association, and the Hispanic National Bar Association.

In summary, Mr. Martinez is a highly regarded and qualified candidate for the federal bench.

I appreciate the Senate's consideration of Judge Martinez's nomination and appreciate the Senate's recent confirmation of Kenneth Marra and Timothy Corrigan, who will serve in Florida's Southern and Middle Districts, two of the largest and busiest judicial districts in the country.

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now return to legislative session.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 2003

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

H.R. 5093, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 5093) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2003, and for other purposes.

Pending:

Byrd amendment No. 4472, in the nature of a substitute.

Byrd amendment No. 4480 (to amendment No. 4472), to provide funds to repay accounts from which funds were borrowed for emergency wildfire suppression.

Craig/Domenici amendment No. 4518 (to amendment No. 4480), to reduce hazardous fuels on our national forests.

Dodd amendment No. 4522 (to amendment No. 4472), to prohibit the expenditure of funds to recognize Indian tribes and tribal nations until the date of implementation of certain administrative procedures.

Byrd/Stevens amendment No. 4532 (to amendment No. 4472), to provide for critical emergency supplemental appropriations.

AMENDMENT NO. 4522

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Madam President, first of all, let me say, I know under the existing order of the unanimous consent request agreed to yesterday between the leaders—let me make a parliamentary inquiry. As I understand it, there is a vote to occur at 10:15; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DODD. On or in relation to the Dodd amendment?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. DODD. Madam President, let me say, first of all, for the benefit of my colleagues, I know our staffs, right now, are working to see if it is possible to come to some compromise on the amendment that I proposed along with my colleague from Connecticut, Senator LIEBERMAN. My hope is that we might be able to do that.

I thank Senator INOUYE and Senator CAMPBELL and their staffs and my staff. They began to work last evening, talking about this matter. There was some discussion about possibly delaying this vote, but the leadership wanted to go forward with a vote this morning, and so we are going to try to work this out, if we can. That would be my fervent goal and desire.

Let me state, again, why they are talking and working here. It was not my hope or desire to have to get involved in all of this, but each of us represents our respective State. And my State has been undergoing some additional pressures. There are some nine applications pending for designation for recognition.

I have been—and still am—a strong supporter of the Native American community. I have a strong relationship with the two tribes in my State that have added tremendously to the economic well-being of my home State of Connecticut.

What provoked this response among the constituents in my State, and provoked the approach that Senator LIEBERMAN and I are taking, is that over a year ago we submitted a piece of legislation calling for a moratorium, a delay on the designation process, so that we could bring some rationality to the recognition process of the Bureau of Indian Affairs; it seemed to be out of control.

In fact, the previous Assistant Secretary at the BIA, on his departure, cited the significant problems that existed within the Bureau of Indian Affairs in terms of its recognition process.

What happened in my State most recently was that two tribes sought recognition, and the BIA rejected both tribes and came up with a third approval that had never been sought, despite the fact that the two tribes had been in opposition to each other during the recognition process. Needless to say, my constituents believed they did not have an opportunity to be heard and don't understand how it is that when a recognition is being sought, all of a sudden a third alternative emerges that was never on the table.

There is a concern that the Bureau of Indian Affairs is sort of out of control; that if this is the way things are going to proceed, we need to put a hold on here to figure out how it will work so people have an opportunity to respond.

There are 200 designation applications pending in 37 different States. What I am talking about in my State, which is smaller than Yellowstone National Park—I said to my colleague from Montana yesterday, I think there are ranches in Montana that are probably larger than the State of Connecticut. So you can imagine, with nine applications pending in a State that is 100 miles by 40 or 50 miles, with an impact on 3½ million people, this is not insignificant.

I sat here and voted for drought relief legislation. I voted for assistance to farmers in the Midwest. When there are hurricanes and fires, even though my State is not affected, I stand up and support those efforts because I respect the needs of various States.

My State is now facing some real problems on this issue. And I am not asking to stop a process. I am not anti-Native American at all. My record is replete with indications of how strongly I feel about Native Americans. But I have an obligation to stand and speak for my constituency. And they are feeling threatened when they are not allowed to be heard. When they cannot participate in a debate that is going to have a huge impact on their lives, it seems to me something needs to be done.

If I wait much longer, then the issue is going to be over, because I would vehemently oppose—vehemently oppose—any effort to reverse a designation and a recognition. That, to me, would be outrageous and a dreadful precedent. But once that recognition occurs, it is unlikely to ever be rolled back.

So what I am trying to do is not, in any way, to suggest that those who have been designated or recognized—that anything be done there at all but merely in the future, as we are talking about this, shouldn't the people of my communities be notified? My Governor, my attorney general, the mayors of my towns that are surrounding these areas, shouldn't they be notified?

What about in the other 37 States where this is going to occur. It may be in Connecticut today, but it may be your State next. I think being heard on these matters, being invited to participate—there are seven criteria that are listed in the regulations, and in some cases various criteria are totally disregarded. In some instances, the technical staff have made one recommendation and have been overruled by the Assistant Secretary, totally disregarding all the efforts and work done by the people at the BIA.

So I do not like doing this. This is not the way I normally proceed, but I am in a tough place. I have to stand and speak for my constituents. I am hopeful we can find some compromise in the next few minutes to avoid asking our colleagues to make choices on matters such as this. This is not how I like to proceed, but if I let this go and another year comes and goes; and these processes go forward under a system, as it did with the two applications I just described, you can imagine how my constituents and yours may react down the road.

I also am concerned that this is going to devalue the recognition process. For those who get recognition, to suggest somehow the process was not as thorough and as fair as it should be does a disservice to those who deserve recognition.

So this process needs fixing. If we do not do that, everybody gets hurt by it and we build up a level of hostility that is unnecessary.

This is a moratorium. The moratorium could end next week. It need not be a moratorium indefinitely. It just says a moratorium until you make these fixes. No new law is being requested here—nothing. It just says comply with the existing regulations and make sure the people are notified and invited to participate in a debate that can have a profound effect on their lives and their families. That is not too much to ask. It does not give them a veto power. It does not make it an adversarial proceeding. It just says we ought to invite people to participate. That is the American way. That is the way we do things.

So this amendment merely says to have a moratorium until these matters are put in place and worked out. I do not know how my colleagues may vote. I may lose today. But as I stand here, I promise you, if you are one of the 36 other States and this comes to your State, then you are going to be standing where I am, and you are going to be insisting upon the same sort of thing.

We stand and vote to support each other's needs when they occur. I am asking my colleagues to support me in

this particular case because my State is feeling it. And we are not anti-Native American at all. Quite to the contrary. We are deeply proud of the Mohegan and Pequot Tribes in my State. I strongly supported their recognition efforts. In fact, I have been highly criticized in books because I stood in support of them when they were under threat of not being recognized.

So I will not take a back seat to anyone in my determination to fight for them. But I need to fight for my constituency as well when they feel as though they are not being served well by a process that is fundamentally broken. And when the Assistant Secretary for the Bureau of Indian Affairs says the system is broken, it is not working, then we ought to pay attention. And that is what this amendment is designed to do.

My fervent hope would be, with the staff of the committee, in the remaining 15 minutes or so we have, we put on the table an offer that would make this moratorium only exist for 1 year, to clarify some language they were concerned about. We can offer that, accept it, and move on. We need not have this become a divisive debate.

I know the chairman of the committee and the ranking member are here, and they want to be heard. I have spoken my piece. I hope we can work it out in the next 15 minutes or so and then put this issue behind us. But if we cannot, I am going to ask my colleagues to support my State. Look to your own States. If you are unclear, inquire, because the issue will come to your State, I promise you, sooner or later. And this vote will be looked back upon as to where you stood on this issue when you, all of a sudden, are confronted, as we were, with two groups seeking recognition and neither one was approved, and then there is a third one. That is how bad this system is right now. That is wrong. That is unfair. My people deserve better than that.

So I urge my colleagues to support this amendment if a compromise is not reached.

I yield the floor.

I suggest the absence of a quorum and that the time be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Does the Senator from Connecticut withhold his suggestion of a quorum call?

Mr. DODD. Yes.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. CAMPBELL. Madam President, I would defer to Senator INOUYE, our chairman, if he wishes to speak first.

Madam President, I support a motion to table the Dodd amendment. Let me say at the outset, though, that no one questions Senator DODD's commitment to the Indian people of America. He has an exemplary voting record, and he has always been there when we needed help.

My problem with his amendment is that there has been almost no input from tribes themselves, and in the past they have opposed any moratorium. We all know the problem that exists now with the recognition process. We all know it needs to be streamlined and needs to be changed. It is replete with problems. We have heard it over and over.

We have had a couple hearings on this already in the Indian Affairs Committee, and we intend to take it up again. Whether we have run out of time this year has yet to be determined.

But I was not aware there was going to be some discussion on a compromise amendment. And because the unanimous consent request was entered into yesterday, many of us, including me, have made reservations on planes that we can't change. So I hope I am going to be able to be here to speak to it, but knowing how these things sort of creep, I may not be able to do so.

So from my own standpoint, if I do have to leave, I am going to defer to our chairman, Senator INOUYE. The Indian Affairs staff is working with Senator DODD's staff on an amendment that may be acceptable, but I will certainly defer to my chairman in his decision of whether to support that amendment.

I yield the floor.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Hawaii.

Mr. INOUYE. Madam President, it is with some considerable reluctance that I rise today to speak in opposition to the amendment proposed by my good friend, the senior Senator from Connecticut, that would prohibit the expenditure of funds for the operations of the Branch of Acknowledgment until the Secretary of the Interior has certified to the Congress that certain administrative procedures have been implemented with respect to the consideration of any petition submitted to the Secretary.

The provisions of this amendment are drawn from an authorizing bill, S. 1392, that is now pending in the Committee on Indian Affairs.

At Senator DODD's request, in July of this year I agreed to schedule a hearing on S. 1392.

That hearing is to be held on Tuesday, September 17.

As chairman of the Committee on Indian Affairs, I believe that Senator DODD's request for a hearing in the authorizing committee reflects a position on which we can both agree that the appropriate venue for the consideration of reforms to the Branch of Acknowledgment process is in the authorizing committee of jurisdiction.

In an effort to responsibly address the matter of whether there is some urgency associated with effecting reform in the Branch of Acknowledgment that cannot await action by the authorizing committee, particularly as such reform may affect the State of Connecticut, I authorized my staff to contact the Department of Interior's Branch of Acknowledgment officials for information on the petitions currently pending before the Branch.

The committee is advised that there are two petitions of tribal groups located within the State of Connecticut that are currently pending in the branch.

Both petitions are the subject of court-ordered negotiated agreements, and thus both petitions are subject to the ongoing jurisdiction of the Federal district courts.

So for those members who believe that the Congress should forebear from injecting itself into pending litigation, the jurisdiction of the Federal district courts should be honored as well here and action should not be taken on an amendment which would interfere with the courts' jurisdiction. The court-ordered negotiated agreement for the Schaghticoke Tribe provides that the proposed finding whether positive or negative is due to be published on December 5, 2002.

Thereafter there is a 6-month comment period, followed by a two-month response period, both of which may be extended at the request of the parties.

If no extensions are requested or granted, then assuming a positive finding, the earliest time in which a positive finding would become effective for purposes of any appeals by the State of Connecticut or other parties, is August 5, 2003.

For the Golden Hill Paugussett Tribe—under court order, the proposed finding whether positive or negative is due to be published on January 21, 2003.

Thereafter there is a 6-month comment period, followed by a 2-month response period, both of which may be extended at the request of the parties.

If no extensions are requested or granted, then assuming a positive finding, the earliest time in which a positive finding would become effective for purposes of any appeals by the State of Connecticut or other parties, is September 21, 2003.

The other groups that will be affected by the amendment proposed by Senator DODD are two petitioning groups of the Nipmuc Tribes of Massachusetts, the Mashpee Tribe of Massachusetts, the Snohomish Tribe of Washington State and the Burt Lake Band of Michigan.

I firmly believe that Senator DODD's authorizing legislation can be addressed through the hearing process and acted upon well within the time frame that is anticipated for action on the two pending petitions from Connecticut tribal groups, and thus, that it is not necessary for the authorizing provisions of this amendment to be considered within the context of the Interior appropriations bill.

In addition, I am certain Senator DODD would agree with me that reforms of the magnitude proposed by his amendment merit the full consideration of all those now involved or who may become involved in the Federal acknowledgment process—including the administration, and equally important, the Nations of Indian country, as well as other interested parties.

There has been no hearing nor public record developed on the proposal advanced in Senator DODD's amendment, and I think it is incumbent upon us to develop such a record and to receive testimony on this proposal before any action is taken precipitously.

There are other proposals now pending in the Congress for the reform of the Federal acknowledgment process—Senator CAMPBELL, the vice chairman of the Committee on Indian Affairs, has one such proposal.

Clearly, the proponents of those measures would also wish to have their legislative initiatives given full consideration, and I believe we should afford a full and fair opportunity for all such measures to be considered rather than adopting one proposal that has not yet been the subject of hearings.

Under current law, the Branch of Acknowledgment works with petitioning tribal groups in a cooperative process which is designed to assure that a petitioning group has submitted data sufficient to address each of the seven criteria that petitioners must meet.

The regulations require the Assistant Secretary for Indian Affairs for the Department of the Interior to provide notice of the petition to the Governor and the Attorney General of the State in which the petitioning group is located.

It has been represented that the proposed amendment does nothing more than codify the existing Branch of Acknowledgment regulation, but in fact, the proposed amendment proposes to replace most of the existing procedural rules governing the acknowledgment process with a contested hearing process.

It would grant interested parties, and not petitioners, the power to control the timing of the contested case and would prevent the expenditure of any funds by the Branch of Acknowledgment if the Branch does not comply with the new procedural rules established by the amendment.

The amendment requires the Secretary to consider ''all relevant evidence submitted by a petitioner or any other interested party, including neighboring municipalities.''

Upon the request of an interested party, the Secretary may conduct a formal hearing for interested parties to present evidence, call and cross examine witnesses, or rebut evidence even before a petition is complete.

A transcript of the hearing is to be made part of the administrative record upon which a decision may be based.

Nowhere in the existing administrative regulations is a contested case hearing, such as the one proposed by my colleague's amendment, authorized.

Instead, the general spirit of the regulations is to enable a cooperative relationship between the petitioning group and the Branch of Acknowledgment, as reflected by the authorization for a technical review of each petition by the Branch of Acknowledgment and the opportunity to supplement or amend a petition before it is actively considered and to have information submitted by third parties who have legal, factual, or property interests in the recognition decision to be considered.

The present administrative process allows for publication of a proposed finding, a 6-month comment period for all interested parties, and a 2-month response period for the petitioning group.

A final determination is then made and time lines are established governing requests for reconsideration and when the decision becomes final.

In contrast to the existing regulations, the proposed amendment creates a contested case process the timing of which is controlled not by the Branch of Acknowledgment in conjunction with the petitioning group, but by those municipalities, counties, State attorney generals, State Governors, and other tribes falling within the notice provisions of the amendment.

Given the fact that the amendment proposes to include State, county and municipal governments from each area that the petitioning group was historically located—and that Federal policy forced not one but many relocations of most tribal groups from their traditional areas—the amendment contemplates the involvement of scores if not hundreds of small communities that no longer are in close proximity or have any geographic relationship with the petitioning group.

With the exception of the continued application of the seven criteria in the existing regulations, almost every other aspect of the regulations would be changed under the amendment, including the burden of proof a petitioning group must satisfy to meet the criteria.

In addition, a petitioning group would be required to defend its petition whenever an interested party requests and is granted a hearing, even though that request may be made at a time where a petitioning group has not yet perfected its petition.

I am not suggesting that the proposals advanced in this amendment do not merit the consideration of the Congress.

Indeed, as I have earlier indicated, the Committee on Indian Affairs has scheduled a hearing on Tuesday, September 17 for that very purpose.

What I am suggesting, Mr. President, is that there is an appropriate venue for the consideration of substantive changes in Federal Indian law and policy, and that venue is in the authorizing committees of the Congress.

I ask unanimous consent to print the following statement in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE INTERIOR—FY 2003 INTERIOR APPROPRIATIONS BILL EFFECT STATEMENT TO THE CONFERENCE MANAGERS

Bureau/Office: Bureau of Indian Affairs.

Appropriations: Operation of Indian Program.

Activity/Subactivity: Central Office Operations/Tribal Government.

Project/Budget Element: Tribal Government Services.

[In thousands of dollars]

Item	FY 2002 enacted	FY 2003				
		Pres. request level	House level	Senate level	Compared to request	
					House	Senate
Branch of Acknowledgment and Research	1,050	1,100	1,600	1,100	500	0

House Action: House added $500,000 to the Bureau's Central Office, Division of Tribal Government Services. Fund are specifically for the Branch of Acknowledgment and Research (BAR).

House Report Statement: None.

Reference: This amendment was reported and voted on by the full Appropriations Committee.

Effect of House Action: The House Action would enable the BAR to hire additional staff to process requests from Indian groups who are petitioning for Federal recognition.

What would the funding be used for?: Currently the BAR has three research teams. Each team is composed of a cultural anthropologist, a genealogist, and a historian. FY 2003 funding for three teams and support staff for BAR is $1,100,000. The additional funding would enable the BAR to staff one additional research team and hire support staff who would focus on administrative functions, such as FOIA requests, preparation of administrative files for litigation, and other time consuming responsibilities that are currently handled by the professional research teams. Consequently, this funding would allow four research teams to focus on processing documented petitions.

Feasibility/capability of the proposed funding level or language this fiscal year?: On November 2, 2001, General Accounting Office (GAO), released a report on the acknowledgment process titled ''Improvements Needed in Tribal Recognition Process.'' The two concerns raised by GAO were the need to improve the speed and transparency of the decision-making process. These additional funds will enable the Department to address these two identified concerns.

Is the program/project ranked on existing priority setting system? This program was included within the total budget priorities competing for increased funding. However, because many other priorities, funding was not included within the President's Budget Request.

Senate Action: Proposed at the President's Budget request level; however S. 2708 was introduced on the floor which amends the Department of the Interior's appropriations bill.

Senate Report Statement: None.

Reference: S. 2708.

Effect of Senate Action: S. 2708 is an amendment to the Department of the Interior's appropriations bill. The purpose of this bill is ''[T]o prohibit the expenditure of funds to recognize Indian tribes and tribal nations until the date of implementation of certain administrative procedures.''

The Department should oppose this bill because it will result in the Department being unable to comply with court scheduling orders for issuing acknowledgment decisions and because many of its provisions are ambiguous and appear to be unworkable.

Sections 1(c)(1)(A) and 1(c)(1)(B) require notice to each state, county and local government in the area where the petitioner is located and in the area historically occupied by the petitioning group. The acknowledgment regulations already provide for written notice to the state and local government where a petition is currently located and provide for notice of the petition in the Federal Register and in local newspapers. Written notice to governments where the petitioner was historically located within 30 days of the receipt of a letter of intent is unrealistic. There is insufficient evidence in a letter of intent to identify these locations.

Section 1(c)(1)(C) requires the Department within 30 days to notify any Indian tribe and any other petitioner that, as determined by the Secretary (i) has a relationship with the petitioner (including a historical relationship); or (ii) may otherwise be considered to have a potential interest in the acknowledgment determination.

As with the prior provision, the difficulty with the notification provision with the 30-day deadline, is that it may be that until a petition processing is begun, or at least until the preliminary technical assistance review, that the Department will not know all of the petitioners, tribes, states, and others that could be involved. Notice beyond that in the Federal Register to such entities within 30 days of the receipt of a letter of intent is not feasible.

Section 1(c)(2)(A) requires the Secretary to consider all relevant evidence submitted by a petitioner or any other interested party, including neighboring municipalities that possess information bearing on the merits of a petition. The Department already considers all evidence which is submitted within prescribed time frames by petitioners and any other interested party, including neighboring municipalities.

Under section 1(c)(2)(B), the Secretary, on request by an interested party, may conduct a formal hearing at which all interested parties may present evidence, call witnesses, cross-examine witnesses, or rebut evidence presented by other parties during the hearing.

The bill leaves unspecified who the hearing would be before, when in the acknowledgment process this hearing would take place, and the purpose of this hearing. Therefore, any advantages of a hearing are unclear.

Further under the existing regulations, The Department provides for hearings before the IBIA, an independent administrative review body. If an additional hearing is intended, it would further delay decisions on the petitions.

Under section 1(c)(3)(A), the Secretary shall ensure that the evidence presented in consideration of a petition is sufficient to demonstrate that the petitioner meets each of the 7 mandatory criteria for recognition contained in section 83.7 of title 25, Code of Federal Regulations (as in effect on the date of enactment of this Act).

This section appears to restate the existing standard used by the Department.

Under section 1(c)(3)(B), the Secretary shall consider a criterion to be met if the Secretary determines that it is more likely than not that evidence presented demonstrates the satisfaction of the criterion.

The meaning of the stated standard is unclear, particularly as to whether it changes the regulatory standard which provides that a criterion shall be considered met if the available evidence establishes a ''reasonable likelihood of the validity of the facts relating to that criterion.'' It is unclear if this provision would change the existing standard.

Under section 1(c)(4), the Secretary shall publish in the Federal Register, and provide to each person to which notice is provided under paragraph (1), a complete and detailed explanation of the final decision of the Secretary regarding a documented petition under this Act that includes express findings of fact and law with respect to each of the criteria described in paragraph (3).

The regulations already require that notice of the final determination be published in the Federal Register. It is ambiguous if the complete final determination is to be published in the Federal Register which would be an extraordinary and unnecessary expense. Presently, the decisions are publicly available and will be posted on the Internet as soon as possible.

Recommendation: The Department does not support this amendment, and it opposes considering it as part of the Interior Appropriations Bill.

Mr. INOUYE. Madam President, what I would like to propose is to convert this amendment into a bill and have it referred to the Committee on Indian Affairs to give time to the respective staffs, the staff of the committee and the staff of Senator DODD, to work over this measure and come forth with a resolution of the matter. When that resolution is reached—and I gather it can be reached in 24 or 48 hours—we can once again bring up the new amendment and consider that.

If I may, I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, last night I worked with Senators INOUYE and DODD until almost 11 o'clock. The arrangement made at that time was that we would have a vote at 10:15 on the Dodd amendment. The Senators have worked with their staffs and we are still going to have a vote at 10:15 but not on the Dodd amendment. We are going to ask unanimous consent to set that aside and to see if Senators DODD, CAMPBELL, and INOUYE can work out this problem that is now facing us. They do believe by early next week they can work something out.

I know some Senators are going to be upset that we are only voting on a judge this morning, but there has been a lot of work going into having this amendment withdrawn. I think it is in the best interest of the Senate that we not charge forward on something if it can be resolved. There will be a vote at 10:15. We will vote on Arthur Schwab, of Pennsylvania, to be a judge. We expect to announce that in a moment or two.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Madam President, before the unanimous consent request, I thank the distinguished majority whip. I thank my colleague from Hawaii, my colleague from Colorado, and the Senator from Montana as well. I apologize to colleagues who were counting on a vote. I know the leadership wants to have a vote. This matter is very important. If we can resolve this by not having a divisive Senate on this issue, I think that exceeds the importance of whether we have a vote. We are going to try to work this out so we can deal with the underlying cause of the amendment. I thank the Senators for offering my colleague from Connecticut and I a chance to come to a solution. We will ask unanimous consent to temporarily set aside the Dodd-Lieberman amendment. Then this will pop back up again, I presume, Tuesday when we come back after Yom Kippur and deal with the matter. I am confident that at that time we will have resolved this problem and we can vote on a compromise. I apologize. We worked late last night. I thank the Senators and their staffs. Senator REID was on the phone until after 11:30. Time didn't permit us to get it done. I don't want to see the Senate vote on a matter of this importance without trying to resolve the differences. We will vote on a judgeship, but we will, at some point, vote on this matter—a compromise or the Dodd-Lieberman amendment. I hope it will be a compromise that will be satisfactory to everybody.

I thank the Senator from Nevada. He works hard to keep things on track. This is something which I think rises to the level of reaching a compromise on an important effort.

Mr. REID. I simply say to my friend that I think we have far too many votes here anyway that are not necessary. I think it shows the experience and wisdom of the people who have been working on this issue, along with you and Senator CAMPBELL. There is no need to have a vote on this matter. We may never have to have one. If we do, we will vote on it. I think a lot of people say ''I want a recorded vote'' because it looks good—or whatever reason. We spend far too much time voting on matters that could be passed without a recorded vote. Even though there is no vote on this amendment, I think the Senators have saved us a lot of time.

The next vote will occur at 5 o'clock Tuesday.